

TRADE ENFORCEMENT: USING TRADE RULES TO LEVEL THE PLAYING FIELD

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS SECOND SESSION

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WEDNESDAY, JUNE 25, 2014

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:12 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Stabenow, Carper, Cardin, Brown, Casey, Hatch, Grassley, Crapo, Thune, and Toomey.

Also present: Democratic Staff: Jason Park, International Trade Counsel; Jayme White, Chief International Competitiveness and Innovation Advisor; and Elissa Alben, International Trade Counsel. Republican Staff: Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; Rebecca Eubank, International Trade Analyst; Kevin Rosenbaum, Detailee; and Shane Warren, International Trade Counsel.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The Finance Committee will come to order.

Much of the recent debate in the Congress over international trade has focused on new agreements, agreements that are currently in the works, including the Trans-Pacific Partnership and the Trans-Atlantic Trade and Investment Partnership. It is my view that not enough time has been spent on the trade agreements that are already in place. Have they created American jobs? Have they boosted our economy? Are they being effectively enforced?

While I intend for the Finance Committee to examine all aspects of U.S. trade policy, today it is going to focus on enforcement. Without strong enforcement, no trade deal old or new is able to live up to its potential for jobs and economic growth, and it becomes extraordinarily difficult to build support for new agreements. Foreign nations will continue locking American goods and services out of their markets. Foreign companies that get unfair backing from their own governments will continue to undercut our manufacturers. They will undercut our farmers, they will undercut our ranchers, and they will drive hardworking Americans out of business and out of their jobs.

The latest tactics used by some foreign nations and companies to skirt our trade rules seem like they have been ripped from the pages of crime and spy novels. They hide paper trails to make it harder to build cases in trade courts. They intimidate witnesses,

force American businesses to relocate factories or surrender intellectual property, and threaten retaliation if they speak out against unlawful behavior. They even spy on our trade enforcers and our companies to undermine efforts to hold them to the rules, and, after they have been caught breaking the rules, they engage in outright fraud to avoid punishment. They play cat-and-mouse with Customs authorities, and they use shell games and fraudulent records to exploit weaknesses in our system.

The global economy is more interconnected than ever, which means that there is even more at stake for American workers and American businesses. China, India, Brazil—the list of critical markets with serious, serious enforcement challenges has grown. As that process has played out, for example, currency manipulation has hit American workers and our businesses harder than it did in previous decades, and that is particularly true when it comes to China. Currency manipulation makes any product manufactured in our country—any product—artificially more expensive. In effect, it is a way for China to keep a finger planted on the scale, costing the U.S. jobs and making it harder to recover further from the Great Recession.

Now, when I came to the Senate, the U.S. had only three free trade agreement partners. Today it has free trade agreements with 20 countries. China joined the World Trade Organization in 2000, bringing with it a host of enforcement challenges. With so many new agreements and issues to confront, the enforcement job has gotten bigger. Our enforcement policies have to account for new rules in trade. Guatemala, for example, is now a U.S. free trade partner. When Guatemala repeatedly fails to enforce its own labor laws, our country has to take a stand, and our country has to uphold the rules.

All trade commitments and all agreements have to be enforced with the same vigor. The challenges of the modern global economy simply do not always fit within our aging enforcement system. American trade enforcement, in short, needs to be brought into the 21st century. For example, when the Chinese government gives its domestic solar companies massive subsidies, our government needs to respond quickly and with all available resources. In practice, the response took years, and it was too little and too late to protect thousands of American jobs and homegrown technologies. The Chinese solar companies had already crippled their American competitors. That is why a more effective enforcement authority is needed. Better enforcement tools would identify and stop a problem more quickly before it costs our people jobs.

Now, the same goes for enforcement on our borders. When fake tennis shoes or counterfeit computer chips arrive in our country, Customs often appears too focused on security rather than its trade mission. This is especially damaging, since foreign companies and governments are finding new ways to mask where the products come from before they show up at our doorstep. For example, Chinese companies avoid antidumping duties by routing merchandise through a place like Singapore before it heads to the United States.

The schemes are becoming even more complex, sometimes involving shell companies that appear one day and disappear the next without leaving any paper trail. The ENFORCE Act, bipartisan leg-

isolation I first introduced in 2011, would mount a stronger defense against those practices. It would set up a standardized process to move investigations forward, and it would establish better lines of communication between agencies to get information in the right hands. It would also refocus Customs so that its trade mission does not get short shrift.

Proper trade enforcement is an increasingly difficult job. It takes time, and the fact is that it is impossible to stand up a trade case in a single day. But it is essential for enforcement agencies to have the resources needed to do their jobs effectively. Too often when these cases lag, American workers are losing their jobs, and our businesses close their doors. Succeeding in the global economy is already challenging. The U.S. should not add to the difficulty by underfunding important enforcement efforts.

This is especially true when our country is negotiating more trade agreements. There are lots of American businesses and workers who look at the North American Free Trade Agreement and the World Trade Organization and wonder whether more trade agreements are really a pathway to growth, and that comes up in my State all the time, a State where one out of six jobs depends on international trade.

If enforcement falls short for the agreements already in place, it is going to call into question America's ability to enforce future agreements, and our international competitors will see an opening to break the rules at the expense of American jobs and American exports. So the challenge now is to build a strong enforcement system that befits a modern global economy and one that ensures trade agreements respond to today's challenges to deliver jobs and economic growth to more Americans.

[The prepared statement of Chairman Wyden appears in the appendix.]

Senator Hatch?

**OPENING STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH**

Senator HATCH. Thank you, Mr. Chairman. I apologize for being a little late, but I appreciate you holding this hearing.

Today we are examining the role of trade enforcement in advancing U.S. international trade interests. Now, some of the most important trade enforcement tools we have are U.S. safeguard and antidumping and countervailing duty laws for companies like U.S. Magnesium, which operates in Salt Lake City and Rowley, UT. Trade laws are essential to their ability to compete against imports that unfairly benefit from foreign government interference in the market. I want to ensure that these laws remain effective tools in our international trade arsenal.

That is one reason the Bipartisan Congressional Trade Priorities Act, which I introduced with former Senator Baucus in January, includes, as a principal negotiating objective, a directive to preserve the ability of the United States to rigorously enforce our trade laws. I also want effective trade enforcement at the border. That is why I worked with Chairman Wyden to craft a version of the ENFORCE Act that gained unanimous bipartisan support in the Finance Committee. This bill provides new tools to help stop cir-

cumvention of our trade remedy laws, and I want to compliment Senator Wyden for his work on that. Legislation I introduced with former Senator Baucus in 2013 to reauthorize U.S. Customs and Border Protection includes the ENFORCE Act, in addition to a number of other tools that will help stop the entry of counterfeit and other illegally shipped goods into the United States.

Now, I hope the committee will act on that bill soon. And, while we work to ensure that our Nation has the tools to battle unfair trade practices domestically, we also need to create effective multi-lateral and bilateral systems to help us enforce our rights abroad.

When used well, the World Trade Organization dispute settlement system has proven to be an effective forum. Senator Portman, when he was the U.S. Trade Representative, brought the first WTO dispute against China, in which China was found to have breached its WTO commitments. Before that case, China was imposing restrictions on imports of U.S. auto parts that were harming U.S. companies and workers. By effectively employing the WTO dispute settlement system, we were able to get China to reverse course and remove those restrictions, and, as you can see, we have a system that works.

Of course, the effective use of the dispute settlement tools at our disposal depends upon the proper prioritization of enforcement efforts by the administration. I remain disappointed in the Obama administration's failure to bring a single case against Russia since they joined the WTO.

When Congress considered legislation granting Permanent Normal Trade Relations to Russia in 2012, the administration argued vigorously that we needed Russia in the WTO so we could bring them to dispute settlement when they violated international trade rules. Ironically, Russia recently announced that they would pursue a WTO case against the United States while our administration refuses to act, even though Russia has repeatedly violated WTO rules concerning sanitary and phytosanitary practices, intellectual property rights, and, of course, localization barriers.

I am similarly disappointed when it comes to the administration's enforcement of intellectual property rights abroad. Despite Canada's, Chile's, China's, and India's rampant and repeated disregard for their obligations regarding intellectual property rights, the Obama administration refuses to bring a single case against any of these countries' practices, sending a signal not only to these nations, but to the rest of the world, that this administration will not act to protect U.S. holders of intellectual property rights abroad.

I also remain deeply disappointed in the Obama administration's selective implementation of our trade agreements with Colombia, Panama, and South Korea, time and again choosing labor over innovation. For example, Panama was forced to make statutory and regulatory changes to its labor laws before the administration would even submit that free trade agreement to Congress for approval. In the case of Colombia, the administration required the Colombians to make changes to their labor regime that were not even required by the free trade agreement before sending the agreement to Congress.

Contrast this with the case of the Korea Free Trade Agreement, where the Obama administration allowed the agreement to enter into force knowing that the Koreans had not created an effective and fully independent review mechanism for pricing and reimbursement of pharmaceuticals and medical devices. In my view, they squandered the leverage of entry into force, and now we face an uphill battle to bring Korea into compliance.

We should not tolerate similar practices going forward. That is why the Trade Promotion Authority bill that former Senator Baucus and I introduced contains strong new oversight mechanisms that will help ensure full implementation and effective enforcement of our trade agreements. I intend to make absolutely sure that each country with which we have a future trade agreement is fully in compliance with that agreement before the agreement enters into force.

We must also do a better job of protecting U.S. innovation. That is why I introduced legislation to create a Chief Innovation and Intellectual Property Negotiator in the Office of the U.S. Trade Representative. This individual would ensure that intellectual property rights are no longer an afterthought, but a key component of our trade and enforcement policies.

Now, strong enforcement of existing obligations is vital, but we also need to be pushing boundaries, constantly developing and negotiating the international rules to counter unfair trade practices with new high-standard trade agreements. Again, our bipartisan Trade Promotion Authority bill achieves this, addressing currency practices, digital piracy, digital trade, cross-border data flows, cyber-theft of trade secrets, localization barriers, non-scientific sanitary and phytosanitary practices, state-owned enterprises, and trade-related labor and environment policies.

Many of the tools I mention today will only be effective once they are put into law. So I hope the committee will soon act on these pending trade bills so that we may provide the American people with the best, most up-to-date, and effective enforcement regime possible.

Again, Mr. Chairman, thank you for holding today's hearing. I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you, Senator Hatch.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. I simply would like to offer to the folks in the back with the signs: I understand that Americans have strong views that they want to express, and the First Amendment protects our right to say what we want, but we also have to respect the rights of others in order to have a discussion.

So at this point, I would like to make clear that I am going to be listening in the days ahead to those who share the views of those with the signs, and I would like to ask our guests in the back to put away their signs and sit down, please.

Thank you very much.

Senator GRASSLEY. I have a letter I would like to submit for the record from the National Cattlemen's Beef Association dealing with trade.

The CHAIRMAN. Without objection, Senator Grassley's letter is entered at this time.

[The letter appears in the appendix on p. 60.]

The CHAIRMAN. We are pleased to begin our hearing today with Mr. Kevin Brosch, representing the National Chicken Council in Washington, DC.

Following Mr. Brosch is Mr. Richard Wilkins, a soybean farmer from Greenwood, DE and treasurer for the American Soybean Association.

Senator Carper, would you like to say a few words about Mr. Wilkins?

Senator CARPER. No. No. [Laughter.] Yes I would.

I have known Richard for a long time. I am happy to see him, and he and his wife, Donna, along with—I think it was a nephew named Christopher—farmed near a place called Greenwood, DE, which is in Sussex County.

Richard, the fellow sitting here to my right had the temerity of asking me before we began this hearing whether or not 400 acres was just about the size of Delaware, and I am just here to say that this man, he lives and he farms in Sussex County, DE, the third largest county in America. They raise more soybeans in Sussex County, DE than any county in America, and more chickens than any county in America.

So we are proud of all that. Not only does Richard raise soybeans, he raises corn, wheat, barley, vegetables, hay, and I think about 150 head of cattle. No chickens, is that right?

Mr. WILKINS. Senator, unfortunately, I married a beautiful young lady who had an allergic reaction to feathers.

Senator CARPER. Well, that is too bad. You are probably the only farm family in Sussex County that does not raise chickens.

We are happy that you are here. The farm has been in their family for, gosh, since 1951, that would be over 60 years. And I have been told that your family has been farming this area for hundreds of years.

In addition to his day job, Richard is also the treasurer of the American Soybean Association. I do not know what that pays, but we are proud that you hold that position, one of nine soybean growers nationwide who make up that organization's executive committee.

He has been active in the American Soybean Association for over a decade, serving in the past as president of the association's Delaware chapter and vice president for the entire organization. Vice president kind of runs in our blood in Delaware—the Soybean Association, the country, whatever it might be.

Richard also serves as a member of the American Farm Bureau Soybean Advisory Committee—a blue hen, a fighting blue hen, not a mud hen, as Richard Durbin likes to say, but a fighting blue hen from the First State of Delaware, earning a bachelor of science degree in agriculture from the University of Delaware, one of my alma maters.

It is great to you see here. Thank you for being a big part of our State and for being here today.

Mr. WILKINS. Thank you, Senator.

Senator CARPER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Carper.

After Mr. Wilkins is Mr. Bart Peterson, senior vice president for corporate affairs and communications at Eli Lilly and Company from Indianapolis, IN.

After Mr. Peterson, we are going to hear from Mr. Leo Gerard, international president for the United Steelworkers from Pittsburgh, PA. Mr. Gerard will now be introduced by our colleague, Senator Casey.

Senator CASEY. Mr. Chairman, thank you, and thank you to Ranking Member Hatch for holding this critical hearing.

We know that aggressive trade enforcement is critical to maintaining a level playing field for all of our companies. Too often we find ourselves on the defense. For example, we know that the domestic steel industry now is facing a new crisis due to unfair trade practices from our competition. According to the recent report by the Economic Policy Institute, domestic steel imports increased by almost 13 percent just from 2011 to 2013. Without action, we stand to lose half a million jobs in this country, over 35,000 in Pennsylvania alone. So we cannot afford to send any of these good-paying jobs overseas.

So, given the importance of this topic, I am pleased to have the opportunity to informally introduce Leo Gerard of the United Steelworkers and also welcome Mr. Mario Longhi, who is head of U.S. Steel, two great organizations that work together every day to create jobs.

Many of you know Leo Gerard's story, but I will just summarize it quickly. I do not think there is anyone who has fought harder to level that playing field over these many years than Leo Gerard.

He is the son of a union miner and activist. He was appointed International President of the Steelworkers in 2001. Since taking the helm, the Steelworkers have filed more trade law complaints than any other union or company.

He is a superb and effective advocate, especially for his workers. We know that Leo and the 850,000 steelworkers, including over 55,000 in Pennsylvania, live these issues day in and day out, and I look forward to hearing his testimony and Mr. Longhi's as well.

We are grateful that he is here with us fighting these same battles. He came to Pittsburgh and U.S. Steel in 2012 and was named president and CEO in June of 2013.

So we are grateful for their leadership and their presence here and their testimony. We are happy to have the chance to say hello to both.

Thank you.

The CHAIRMAN. Senator Casey, thank you, and thank you also for making it clear that this is a business/labor kind of effort that you are focusing on. That is very constructive.

My thanks to all the witnesses for being here. It is our usual practice that your prepared statements are automatically going to be made part of the record. We would like you to use 5 minutes or so to summarize. And even by Senate standards, the next hour is going to be a little bit chaotic because we are going to have three votes on a very important piece of legislation involving essentially the workforce and training.

So you are going to see Senators try to keep this going. We will be almost like trolleys, but I hope that you all will recognize that we would rather be able to just do this continuously. That is not going to be possible. So we will start and get as far as we can.

Mr. Brosch?

**STATEMENT OF KEVIN J. BROSC, TRADE CONSULTANT,
BROSCHTRADE, LLC, ON BEHALF OF THE NATIONAL CHICK-
EN COUNCIL, WASHINGTON, DC**

Mr. BROSC. Thank you. Thank you, Mr. Chairman and members of the committee. My name is Kevin Brosch. I am a Washington trade lawyer who has specialized in agricultural trade for more than 30 years. I have worked in private practice here in Washington, at the Department of Agriculture, and here in the U.S. Senate.

Today I appear before you on behalf of the National Chicken Council. Chicken is one of our most important agricultural products and exports. U.S. production value in 2013 was \$30.7 billion, and we exported 20 percent of our production to nearly 100 countries. U.S. poultry exports have quadrupled since 1990.

The topic you have chosen for today's hearing, Mr. Chairman—enforcement of U.S. rights under trade agreements—is an issue of paramount importance to the U.S. poultry industry. The United States is the most efficient poultry-production country in the world, and potential benefits from free and fair trade are substantial for our industry.

In general, trade agreements have been a success story for our industry. In addressing the issue of enforcement, I should begin by thanking the Obama administration for a very significant recent WTO victory.

In 2009, China imposed unfair antidumping duties on U.S. chicken. The Obama administration aggressively litigated that case before the WTO, and last summer a WTO panel ruled in our favor. We are currently awaiting China's announcement and hope that it will comply with WTO rules. The China case is the best example we can point to of vigorous and timely trade enforcement. Unfortunately, not all unfair trade practices have been pursued this aggressively or successfully.

Several years ago, Mexico brought a similarly unfair antidumping case, and their officials found us in violation. But because Mexico was struck by a virulent outbreak of avian influenza, it has experienced a significant shortage of poultry meat, and Mexico has held imposition of the duties in abeyance. Because of the threat that these antidumping duties could be imposed anytime in the future, we challenged Mexico's decision under the NAFTA agreement's private right of action provisions. The NAFTA dispute settlement system depends upon the governments agreeing to formation of a panel. In our case against Mexico, the case was instituted nearly 2 years ago, but at present we still do not have a panel to hear the case. We believe this is a significant problem of enforcement that needs to be addressed.

Since 1996, we have been shut out of the European market because of supposed SPS restrictions, in particular, the ban of the use of hyper-chlorinated water. As you know, the use of hyper-

chlorinated water has long been approved as safe and efficacious by USDA's Food and Safety Inspection Service. Every week Americans safely consume approximately 156 million chickens that have been processed under FSIS rules.

In 1998, the U.S. agreed to forego the right to use hyper-chlorinated water in trade with Europe if the E.U. would consider four alternative anti-microbial treatments. After 7 years, the E.U. Scientific Advisory Committee finally opined that these AMTs were safe and efficacious and presented no health risk to consumers. However, when the European Commission presented the proposal for acceptance of the use of antimicrobials, the E.U. member states defeated the proposal 27-0.

A few months before it left office, the Bush administration requested dispute settlement before the WTO. After a year, the case moved to panel selection phase. For reasons that have never been explained, the U.S. and E.U. have taken no action to form a panel over the past 4 years, and there is no indication that our government is pursuing enforcement in this case at present.

In 2000, South Africa, a WTO signatory, began imposing unfair antidumping duties on U.S. poultry as well. Despite repeated requests from our industry over the past 14 years, the U.S. Government has not invoked WTO dispute settlement. Prior to 2000, we had a 55,000 metric ton market in South Africa, and, given the rise of the middle-class citizens and the competitiveness of U.S. chicken prices, that market would have grown substantially since that time. Had the U.S. pursued enforcement against South Africa, it would have prevailed. The South African case presents exactly the same legal issues as the China case that we recently won.

In the same year that South Africa began imposing these unfair duties, our Congress passed the African Growth Opportunity Act, which gave South Africa preferential duties access to our market. South Africa has consistently benefitted from a trade surplus with the United States in the range of \$1 billion to \$3 billion annually. In September 2015, AGOA will expire if Congress does not renew it. In our view, it makes no sense for the United States to give special preferences to South Africa under AGOA if they treat our trade unfairly. So, Mr. Chairman and members of this committee, you could help be our enforcement entity in this particular case.

With respect to the two new trade agreements—TPP and TTIP—trade is an important part of the future for the poultry industry, and we are generally supportive of all major trade initiatives, but the trade agreements, as the chairman said, must provide not only strong market access, but adequate systems of enforcement.

With respect to TPP, our major goals are strong commitment to enforcement, and particularly in the area of sanitary and phytosanitary measures. We support the so-called "SPS plus" initiative, but once again, stronger rules only benefit us if there is timely, aggressive, and consistent enforcement.

Our second major ambition—

The CHAIRMAN. Mr. Brosch, I feel badly about interrupting you. We already have the vote on. There is just over 5 minutes left. If you could come to a—

Mr. BROSCHE. I can end this by saying our major ambition is to open the Canadian market in TPP, and, with respect to TTIP, we are a lot less sanguine about that agreement, Mr. Chairman.

Thank you.

The CHAIRMAN. Very good.

[The prepared statement of Mr. Brosch appears in the appendix.]

The CHAIRMAN. Mr. Wilkins, we may be able to get you in. I know colleagues are going to start having to rush off for the vote.

I think at this point, colleagues, we will suspend and go make the vote, and we are going to all come back as quickly as we can.

Thank you.

[Whereupon, at 2:39 p.m., the hearing was recessed, reconvening at 3:22 p.m.]

The CHAIRMAN. The Finance Committee will come to order.

I want to apologize again to all our guests for an afternoon which, even by Senate standards, is bedlam.

Mr. Wilkins, welcome. We look forward to your testimony.

**STATEMENT OF RICHARD WILKINS, TREASURER,
AMERICAN SOYBEAN ASSOCIATION, GREENWOOD, DE**

Mr. WILKINS. Good afternoon. I am Richard Wilkins, a soybean farmer from Greenwood, DE and treasurer of the American Soybean Association. ASA represents all U.S. soybean producers on national and international issues important to our industry.

Thank you, Mr. Chairman, Ranking Member, and the committee, for holding this hearing. We appreciate the opportunity to speak to you.

Since 1996, biotechnology has expanded to encompass the majority of our production. In 2013, more than 90 percent of U.S. soybeans, canola, corn, cotton, and sugar beets were grown with biotech, which is critical as we work to feed a global population of 9 billion by the year 2050. As part of the U.S. Biotech Crops Alliance, ASA urges the administration to make biotech a top trade policy priority by engaging our trading partners on these issues at the highest level and ensuring that each partner honors its obligations under international trade rules. Only with this engagement can we overcome our regulatory challenges, minimize trade disruptions, and strengthen our competitive access. The best way to do this is through bilateral and multilateral negotiations, including under TPP and TTIP.

While enforcement tools through the WTO exist, negotiations to remove barriers with our partners can resolve problems without litigation. Differing regulatory frameworks between importers and exporters pose a challenge for agricultural biotech. In the U.S., the interagency Coordinated Framework establishes that, once a biotech trait is determined to be safe for food, feed, and the environment, it is deregulated.

Other countries have adopted systems for approving biotech traits, but these decisions are subject to different regulations or are overtly political, which can result in lengthy delays between approvals in importing and exporting countries. This is a concern because, until an importer approves a new trait, even a trace amount of that trait detected in a cargo can result in its rejection and major losses for the shipper.

We need a system for harmonizing these approvals. The best approach would be for countries to synchronize their approval timelines or to recognize each others' approval decisions. However, given the varied current regulatory approaches, these solutions may be many years away.

One answer is to establish a global Low Level Presence policy. An LLP would allow a shipment containing a small amount of an exporting country's approved trait without resulting in rejection by an importer. Unfortunately, this discussion has not advanced globally. We believe the United States' leadership on this issue is critical to bringing others to the table. We urge the committee to work with the USTR, USDA, EPA, and FDA to establish an LLP policy that can serve as an example, and to work with our trade partners to establish these policies.

China is by far the largest buyer of U.S. soybeans, importing over one-fourth of our annual production and over one-half of our exports. USDA forecasts that China will also become the world's largest corn importer by 2020. In the past, China routinely deregulated new biotech traits. However, since 2011, China has adopted requirements that unnecessarily lengthen the approval process, including field testing of crops not intended for cultivation.

It is critical for the administration to engage the Chinese at the highest level and remind them that their food security depends on our ability to commercialize new traits in a timely manner. We ask for your help in this effort.

We also have serious problems with the regulatory system in the E.U. While the E.U. approved the first biotech crops in 1996, it has since taken steps to limit their use and to slow new trait approvals. It now requires products containing more than .9 percent of a biotech ingredient to be labeled. Faced with likely consumer rejection of such labels, food companies reformulated and effectively eliminated these foods in the marketplace. The E.U. could have provided information to consumers without distorting trade by establishing voluntary labeling standards for non-biotech foods.

As a WTO member, the E.U. is obliged to choose a less restrictive measure if one that accomplishes its objective is available. The E.U. also has allowed its process for approving imports of new traits to become politicized. Member states routinely block approvals despite positive safety recommendations by the European Food Safety Agency. The result is that the E.U. regularly fails to meet the approval time frames established in its own regulations. Together these factors have led to more than a 50-percent drop in soybean exports to Europe since 1995.

In 2003, the WTO found the E.U. guilty of undue delays in processing applications. The administration should restart negotiations on implementation of this ruling in the context of the TTIP, and should refuse a TTIP that does not bring the E.U. into full compliance.

Prior to the launch of TTIP, ASA called for negotiations to address the E.U.'s labeling regulations and the delayed timeliness for decisions on new traits. However, E.U. officials have repeatedly stated that they will not change any of their biotech laws under a new TTIP. This is unacceptable.

Trade agreements require cooperation by all parties to implement their provisions. We urge the administration and Congress to ensure that the E.U.'s discriminatory policies are addressed within TTIP.

In conclusion, biotechnology must be a top priority in these and future trade agreements. Only when they have real teeth will the U.S. be able to use enforcement tools to protect our interests. If we do not hold our trading partners to their obligations, it will make improving conditions for our exports that much harder.

Thank you again, Mr. Chairman, and to Senator Carper for having me. I am happy to respond to any questions.

The CHAIRMAN. Mr. Wilkins, thank you. We are glad you are here. I know Senator Carper looks forward to asking questions as well.

[The prepared statement of Mr. Wilkins appears in the appendix.]

The CHAIRMAN. Mr. Peterson, welcome.

**STATEMENT OF BART PETERSON, SENIOR VICE PRESIDENT,
CORPORATE AFFAIRS AND COMMUNICATIONS, ELI LILLY
AND COMPANY, INDIANAPOLIS, IN**

Mr. PETERSON. Thank you, Mr. Chairman and members of the Finance Committee, and ladies and gentlemen. I appreciate the opportunity to testify before you today on a matter of great importance to my company, Eli Lilly and Company, to our industry, and to all U.S. businesses that are involved either directly or indirectly in trade.

My name is Bart Peterson. I am the senior vice president of corporate affairs at Lilly. And since our founding in 1876, we have been committed to discovering and developing medicines that make life better for people here and around the world.

Fair and transparent trade rules are fundamental to our success as a business, and the U.S. Government must have the tools and the resources necessary to enforce them. We welcome the committee's efforts to ensure that those tools and adequate resources are available. In particular, we welcome Senator Hatch's proposal to create the position of Chief IP Negotiator at USTR. We also encourage the committee to work diligently to pass Trade Promotion Authority. The bipartisan TPA bill introduced earlier this year addressed a number of important issues for our sector. We hope that any future versions of TPA legislation will be equally strong on these important provisions.

Intellectual property is the lifeblood of the pharmaceutical sector, and its protection is one of our most pressing trade issues. Nowhere is the need for strong language to protect IP more important than in the Trans-Pacific Partnership. It is critical that the final TPP agreement has pharmaceutical IP provisions equal to KORUS and U.S. law, including 12 years of data exclusivity for biologics.

On TTIP, we strongly favor an ambitious, comprehensive, and high-standard trade and investment agreement. Lilly and the biopharmaceutical industry believe that TTIP represents a unique opportunity to promote the highest standards of intellectual property protection, market access, and regulation.

I would like to provide four brief examples of why trade enforcement is so important to Lilly employees and to the hundreds of small and medium-size businesses that depend upon us in the United States.

First, Canada. Since 2005, Canadian courts have struck down 20 pharmaceutical patents, including three Lilly patents, for lack of utility or usefulness, resulting in considerable lost revenue. Domestic generic companies have then been allowed to copy these clearly useful drugs. Canada is the only country in the world using this heightened utility standard, which is in violation of their trade obligations under both NAFTA and TRIPS.*

In India, in recent years, Indian administrative and judicial decisions have undermined biopharmaceutical intellectual property in ways that are inconsistent with India's WTO commitments. We greatly appreciate the efforts of Congress and the administration so far on these issues, and we are hopeful that the innovative industry and the U.S. Government will be able to engage in a renewed dialogue with the new Indian government on these issues and work productively toward solutions.

In China, when China joined the WTO, it committed to provide 6 years of protection against unfair commercial use of data submitted to the regulatory agency in the approval of new medicines. However, China defines "new" as new to the world, and this unique interpretation allows non-innovators to rely on an innovator's approval outside of China to produce unauthorized copies of those medicines inside China. This is not only inconsistent with common international practices, but it also stands to undermine the protection of the next generation of important medicines.

Then finally, Korea. Certain Korean government pricing practices fundamentally conflict with commitments made under KORUS. Patented pharmaceuticals are priced by referencing the prices of similar products on the market, including the prices of generics and off-patent originator drugs. This fails to recognize the value of the significant investment it takes to develop and bring new patented medicines to the people of Korea.

Let me conclude by mentioning anti-counterfeiting efforts. Counterfeiting is not only a serious form of trademark infringement, it costs jobs and revenue and, most importantly, threatens human health. Current laws have had limited effect in stopping this counterfeit trade. Lilly supports the expansion of stronger enforcement measures to better combat this problem, examples like Operation Pangea that targets Internet sales of counterfeit medicines and devices worldwide.

In closing, Mr. Chairman, I would like to compliment the work that your committee and staff have done with the White House and with USTR to continue to put advancing trade and enforcing the rights of U.S. innovators front and center. Lilly looks forward to working with you on improvements to U.S. trade policy and enforcement, to the benefit of our economy and our citizens.

Thank you.

The CHAIRMAN. Thank you very much.

*The Agreement on Trade-Related Aspects of Intellectual Property Rights.

[The prepared statement of Mr. Peterson appears in the appendix.]

The CHAIRMAN. Mr. Gerard?

STATEMENT OF LEO W. GERARD, INTERNATIONAL PRESIDENT, THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), PITTSBURGH, PA

Mr. GERARD. Thank you very much, Mr. Chairman and Ranking Member Hatch. My name is Leo Gerard, and I am the international president of the Steelworkers Union, the largest industrial union in North America, representing 850,000 workers.

I know that my time is short, so I will try to summarize as quickly as possible by saying that manufacturing is the key to a strong global economy, to a strong American economy. And let me just report that, since the allowance of China into the WTO, we have managed to accumulate slightly over a \$7-trillion accumulated trade deficit with China. Each \$1 billion results in the loss of 18,000 jobs, just like each \$1 billion spent on infrastructure results in the creation of that many jobs.

But I know that my time is short, so I want to get to it quickly.

Unfortunately, the Steelworkers Union has more experience in trade enforcement than almost any other single entity, and our experience is often the result of products being sold, dumped, and subsidized at subsidized prices in our market. We have filed or supported cases on countless products ranging from steel to paper to tires to rare earth to solar to wind turbines, in a continuous attempt to try to stop unfair trade.

Let me just say now, quickly, in order to win a case at the USTR, we first have to lose. And what I mean by that is, we have to demonstrate that we have lost jobs, that we have lost market share, that our employers are losing income, that our employers may be losing profitability, that we have people on layoff. We have to show that somehow we have been badly damaged.

Our trading partners have figured that out. So, when we file a trade case, by the time it gets from start to finish, not only have we had to lose jobs at the start, but we continue to lose jobs as they steal market share and damage our industry, not just for the short term, but for the long term.

So let me highlight a couple of issues. First, the issue of currency manipulation is an area of inaction. Both the Senate and the House have individually passed legislation against currency manipulation, but they have never been able to do it at the same time and get any results. Not only does China cheat on currency, so does Japan, Korea, Malaysia, and many others, using the practice to tax our products out of their market and to subsidize the flood of products into our market.

Everyone talks about this problem. That is why we are in this mess. This administration and the last one pointed to dialogue, but engagement is the answer. To point to the members of my union and workers and farmers all across the country, we lose jobs, and that is the result of inaction. The time for talk should be over. The

time for action is now. The House and Senate, as I mentioned, have both passed legislation at one time or another.

I urge you to pass legislation and put it on the President's desk, to work with the House and pass legislation to prevent currency manipulation. I want to thank Senators Brown and Schumer—members of the committee—and indeed Senator Sessions, for their leadership on this issue.

The second issue I want to talk about briefly is Oil Country Tubular Goods, at this point in time, an area where government inaction is going to be the cause of a huge problem if government does not act.

Oil Country Tubular Goods is the product being used to bring natural gas and oil to the surface. It is a high-value product, and our companies have invested billions—I say billions with a “b”—in plant and equipment needed to make this and many other critical advanced products that they now have in the marketplace.

We supported a trade case to address the dumping of this product in our market. In their preliminary finding some weeks ago, the Department of Commerce found dumping margins against a range of companies from various countries, but let Korea off the hook. Their decision was based on faulty assumptions and analysis.

South Korea produces this product for export—and I repeat—they produce this product only for export. They do not produce a pound for their own consumption. They do not drill a foot. They do not use a pound of Oil Country Tubular Goods. It is all for export. None of it is sold in their home market.

So what Commerce chose to do was to check a low-grade, standard, run-of-the-mill construction tubing and use that as a comparison against Oil Country Tubular Goods. That would be like comparing an old used car against a spaceship. They are both vehicles, but they are both dramatically different.

The decision was preliminary. The law provides for a review of their finding and an assessment of their determination. So workers across this country, those directly involved in production of this product and those dependent on the job simply allied with their case, have been rallying for change. Their words have been heard by elected officials. Fifty-seven members of the Senate signed a letter to the administration asking the administration to use the correct analysis.

Those are only two of dozens of efforts that we have made to get this highlighted, but we must do better. There needs to be dramatic reform of our trade policy.

Mr. Chairman, Ranking Member, members of the committee, enforcement of trade laws is good, but if we are trying to enforce bad laws, it does not make much difference. I want to compliment the administration for a lot of the enforcement they have done, but I also say that too much of the trade law is antiquated and does not serve our purpose.

I want to skip some of my testimony to make a case that I have come to understand just recently.

Congress could inform the International Trade Commission of what it deems to be the definition of the term “actual and potential.” “Actual and potential” is in the trade law of actual and potential harm. And, as I said, currently under trade law, for the USTR,

for Commerce, we have to demonstrate that we have been injured, substantially injured. And right now, with just the preliminary decision that Commerce has made, we have hundreds of our members, if not thousands, who are either laid off, working shorter hours, or waiting to be laid off because the market is being distorted by Korea and the faulty assumption.

So I want to just close—I know my time is up—but I want to just close by saying we believe that enforcement is important. We believe there should be aggressive enforcement. But we also believe enforcement is not the remedy for bad trade laws in the first place. It is time that we fix our trade regime.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Gerard.

[The prepared statement of Mr. Gerard appears in the appendix.]

The CHAIRMAN. Mr. Longhi?

STATEMENT OF MARIO LONGHI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED STATES STEEL CORPORATION, PITTSBURGH, PA

Mr. LONGHI. Good afternoon, Mr. Chairman. Good afternoon, members of the Congress. Thank you, Senator Casey, for the kind introduction.

I am Mario Longhi, president and CEO of United States Steel Corporation. I want to thank you for this opportunity to share the significant role U.S. trade laws play in the American steel industry and our industry's urgent need for a level playing field.

I am proud to be here with my friend, Leo Gerard, international president of the United Steelworkers. Together we share the responsibility of ensuring our workers have a fair chance at a fulfilling job and living a fruitful life.

I personally came to this great country when I was a teenager. My parents wanted me to learn, live, and sleep under the blanket of American freedom, to understand and to live by the rule of law, and to embrace the American sense of fair play.

Today I am privileged to lead an iconic American company, that is, United States Steel Corporation. As the largest integrated steel producer headquartered in the United States, our more than 21,000 American employees produce the backbone of our America. But our industry is under attack.

The U.S. manufacturing industry is one of the most successful and vital global markets in the world, but foreign companies are abusing our trade laws. In the case of steel, they are dumping thousands of tons of products into the U.S. market unchecked. These actions demonstrate that American steel companies are being targeted potentially for elimination.

One such product that is being dumped is Oil Country Tubular Goods, or OCTG. OCTG pipes are among the most sophisticated high-tech products that we manufacture, meeting the highest safety and quality standards. They are used 10,000 feet under water, 10,000 feet carved into the earth for the extraction of oil and natural gas. The use of American-made pipe for American energy production directly impacts our Nation's economic and energy security.

Last year, U.S. Steel and other domestic OCTG manufacturers filed a trade case against nine countries for abusing U.S. trade

laws, for dumping their products into our markets. From 2010 to 2012 alone, there was an enormous 113-percent increase of OCTG products dumped into our market. Last month, total OCTG imports hit in excess of 400,000 net tons, a more than 77-percent change year over year. The most notable abusers are South Korean companies that dump 98 percent of their products into the U.S. They do this because they have no home market for their product and are taking direct aim at companies such as U.S. Steel.

This is an important product for us. In the past few years, U.S. Steel has invested more than \$2 billion across our facilities, including \$200 million in a few quarters alone in our Lorain tubular operations in Ohio. These investments are definitely at risk from the unprecedented surge of unfairly dumped products. Unfortunately, Leo's and my fellow employees in my company, as well as countless related industries, will be the ones who will bear the financial burden, because U.S. Steel and other domestic manufacturers cannot stop foreign companies from abusing U.S. trade laws. We must rely upon you, Congress, and the administration to enforce our trade laws.

Earlier this year, the Department of Commerce issued disappointing preliminary findings. They failed to recognize illegally dumped South Korean products. South Korean gamesmanship of our system of laws is very disquieting. Their efforts are unchecked and, sadly, very effective. They have routinely abused the process, and, as a result, the investigators are forced to review incomplete information in an untimely manner. This almost assures that the adjudicators formulate their decisions based upon misleading information. It is not only an economic imperative to open new markets for both American goods and services, it is a moral imperative to provide for the greater economic good by ensuring that the rules governing trade in our own markets are respected.

The laws of this country can and should be used to help the rest of the world better understand fair play. Specifically, we must clearly showcase that, when our trade laws are followed, companies around the world can succeed in the global marketplace, showing that, when everyone follows the rules, everyone can compete and win. But this must be done under the rule of law.

Unfortunately, Mr. Chairman, this is not the world in which we are operating. Your leadership in introducing the ENFORCE legislation is certainly most welcome, and this should be one of many powerful tools in our trade toolbox.

We are very grateful to Senators Brown, Portman, and Sessions for their continued commitment to our industry as we fight currency manipulation and promote other measures to strengthen our trade laws. These trade law initiatives and others are desperately needed to stop the abuses and level our playing field.

I want to thank you for holding today's hearing on this critical issue, for certainly the livelihoods of thousands of Americans and the future of the steel industry hang in the balance.

Thank you.

The CHAIRMAN. Thank you all. It has been an excellent panel, and I know Senators are going to have questions.

[The prepared statement of Mr. Longhi appears in the appendix.]

The CHAIRMAN. My first question is for you, Mr. Gerard and Mr. Longhi. Given the fact that you basically outlined how it seems that Congress and the administration are basically getting there too late in the game, my question would be, what can Congress do so that unfair trade is identified and remedied sooner? For either one of you.

Mr. GERARD. Let me come back to the point that I was making in a rush while I was trying to close. I think Congress could certainly give much clearer direction—and I do not know that there needs to be necessarily legislative change—but much clearer direction on what is already in the international trade rules about the term “actual and potential” injury.

We could look at actual and potential decline in output sales, market share, profitability, productivity, return on investment, utilization. We can prove that day in and day out in the Oil Country Tubular Goods case we started.

You can see what happened with China. We filed cases against China. It took them 3 years because they could not play on a level playing field. They basically left the market, and, as they were leaving the market, the Koreans came in and did the exact same thing as China, except they did not use any of the OCTG in their own market.

So we knew potentially what was going to happen, but, because of the trade law, the ITC demands that you prove injury first. We have to lose jobs first, and, as I say, we have to lose in order to win. That is something that Congress could do right away, and the Senate could lead on it.

The CHAIRMAN. Let us relate this to another matter, and we will get you in on this, Mr. Longhi, if we might. Obviously, this is a lot about priorities. It is about choices. I think the administration made the right choice recently in successfully challenging China’s restriction on rare earths.

My question would be, should there not be a more systematic system of identifying the enforcement priorities? For you, Mr. Longhi.

Mr. LONGHI. Absolutely, Mr. Chairman. The technology available today should grant us the ability to facilitate the effort at our borders, whenever something arrives there, so that we can easily check whether it is in violation by circumventing specifications or through which systems it is being brought into the country.

But the other point is that we should change the way the rule applies. If importers are found creating that condition, they should be immediately punished, not allowed to go 2 years unpunished—creating all the harm that we feel today—before anything can be done.

The CHAIRMAN. Very good.

On IP, for you, Mr. Peterson—this is something of enormous importance in the Pacific Northwest that we hear about with respect to counterfeit computer chips, fake Nikes, all of this flowing through the ports of the Pacific Northwest.

My question to you is, obviously, the pharmaceutical industry cares about this matter. Are there specific proposals that you would like to see the Congress consider in the IP area?

Mr. PETERSON. I think the major concern we have about counterfeit drugs is, first of all, it is an enormous business, estimated to be in excess of \$200 billion now annually in counterfeit drugs.

Counterfeit drugs, obviously, not only have an enormous economic impact, but they affect human health. The likelihood that someone ordering medicines from a website or responding to an ad on satellite radio will get something that is either not efficacious or potentially even dangerous to them is very significant.

These drugs tend not to come from where they are supposed to be coming from. So what we want to do—what we would recommend, Mr. Chairman—is, first of all, to encourage greater cooperation among nations in this battle against counterfeit drugs. INTERPOL and the collaborative team they have put together under this Operation Pangea, which is focused on cracking down across the world on counterfeit drugs, has shown some real impact.

So encouraging that kind of thing and then providing the funding necessary for it, as well as the funding necessary for increased resources for Customs officials, would be helpful. Now, I know this is not a great time to be talking about additional resources, but I think that clearly our Customs services could do better if they had additional resources to combat counterfeit drugs.

The CHAIRMAN. I am going to see if I can get one other question in.

Mr. Gerard, I gather you wanted to comment on this question of the systematic process for identifying enforcement priorities as well.

Mr. GERARD. Well, one of the things, Mr. Chairman, I think that could be done is that the Commerce Department could also establish guidelines so that the Commerce Department could self-initiate complaints, self-initiate that way.

Then we go on top of what Mr. Longhi just said about, when the products come in, we can monitor them right there when they enter into the country to make sure that they are not being transshipped or make sure that they actually are what they say they are.

There are a number of ideas that we could give you on that, and we will put them in a follow-up response to you, because I know time is limited.

The CHAIRMAN. That would be helpful.

Let me see if I can get one other question in for Mr. Brosch and Mr. Wilkins with respect to agriculture, which is so important to the Pacific Northwest.

My take is, as the country negotiates down a lot of the traditional barriers to American agricultural exports, basically what you have is our trading partners erecting new ones, new back-door ways to close their markets. And one of the most pernicious ways they do this is they impose new barriers purportedly to prevent the entry of pests that could cause harm to crops and livestock.

Can you all just—because I am 40 seconds over my time—give me any suggestions that you have to deal with this problem, because I know it is pressing to American agriculture. Either of you?

Mr. BROSCHE. Well, I think the idea that we would have is simply to press forward with the rights that we have today. The WTO has shown to be a pretty successful place to pursue SPS issues.

I was privileged to be one of the two U.S. negotiators of the SPS agreement. I think we did a pretty good job, and the track record since that time, in the hormone case against the E.U., in the salmon case against Australia, shows that if you bring these cases before the WTO, you can prevail, and then we can put the pressure on the other governments.

So, in the case of chicken in the E.U., we would just like that case to be brought forward and to be pursued, and it has not been, as I have explained.

The CHAIRMAN. My colleagues are all on a tight schedule. Senator Brown has to preside at 4 pm.

Senator Hatch, what is your timing? Could we go—normally, it would, of course, be Senator Hatch next. Can we go with Senator Brown?

Senator HATCH. Sure.

The CHAIRMAN. And then we will go right to Senator Hatch.

Senator Brown?

Senator BROWN. Thank you. Thank you always for being such a gentleman and giving me that chance. I appreciate that. Thanks.

Thank you to all the witnesses. It was interesting. Sorry for the truncated way we had to do this today.

I will start with Mr. Gerard. The Commerce Department, as you point out, will make the final determination in the Oil Country Tubular Goods case with South Korea, they say on July 10th. I have heard you say that if this Korea case goes in the wrong direction, it will be a template, a model, a blueprint, if you will, for more and more countries to do what Korea has done.

Even though they have no domestic Oil Country Tubular Goods market, as you pointed out—they do not drill for oil and gas, the point of the Oil Country Tubular Goods production—they have an industry designed solely to take advantage of other markets, primarily our market, the most lucrative market, if you will, in the history of the world.

If we lose this, if we lose on this, if Commerce decides in the opposite way—a loss for American companies and American workers—what is to stop other countries from doing the same thing?

Mr. GERARD. Nothing. The reality of what South Korea has done is, as I said, when they saw what was happening with the Oil Country Tubular Goods issue with China, where we demanded China play on a level playing field, South Korea went and designed an industry for export, and they designed it in a way where they brag around Washington that they have designed it so that they cannot be found guilty.

So the way they have designed their industry, there is no domestic consumption. They have no iron ore, they have no coal, they have no limestone. They have modern mills, and their workers get paid close to about 90 percent of what our workers get, and they have designed it simply so they can export it.

So now we have a case we filed yesterday on tires. All that country has to do to make that tire is make a unique tire that they will not sell in their own market and then chew up our market and be better at it.

We filed a case—somebody mentioned rare earth. That rare earth case was our case, because you need rare earth to make everything.

We had China cornering the market on rare earth and, in fact, holding Japan hostage because they would not sell them the rare earth.

So the model that has been built by South Korea in Oil Country Tubular Goods can be reintroduced in almost any product.

Let me just say this about the steel industry, for people who do not know it. You drive by a steel plant and you will see all those rows of steel out there, and, from a distance, they all look the same. Every one of them could be different. Every one of those steel rolls that you see could be scientifically different, chemically different, made for a specific product.

So there is nothing that stops any of that stuff going on in any country that wants to target us for export. They could build a mill in Thailand and decide, we are going to build a mill to take out this piece of their market and do it the same way that South Korea did.

So what the Commerce Department does between now and July 10th, when they make their determination, in many ways is going to predict the future not only of the steel industry, but lots of manufacturing in this country, and I, for one, am petrified about it.

If Commerce does not do its job, and if they give us some ridiculous margin of 4 percent or 5 percent, South Korea will just eat that. They need to be treated the same way the Chinese were treated, with a duty of 95 percent or 96 percent, because they are cheating just like China did.

Senator BROWN. Thank you.

Mr. Longhi, I have a very simple question. It seems to me that passing currency manipulation legislation—you have talked about it; a number of people have—is the single most effective thing we can do to boost U.S. manufacturing. Do you agree with that?

Mr. LONGHI. I agree with that. Congress should pass legislation right now. I believe you may have a moment where it can occur at this point. But it is a very important piece of legislation to give us the chance to apply the very same circumventing duties that apply in other circumstances to countries that play against the rules.

Senator BROWN. Thank you. The chairman certainly has been very helpful on this whole issue, and a number of members of this committee in both parties have signed onto that—either that legislation or pushing in that direction on currency overall.

Let me ask you one question about enforcement. One of the most poignant parts of your testimony, Mr. Longhi, was about putting together a trade case, whether it is filed by industry, by unions, or by the government, and how much damage is done when a country violates our trade laws.

We put these cases together month after month after month after month. These companies are in our country; their products are being sold into the United States. The damage has been done. Our laws are slow, they are complicated, and often relief comes too late.

So answer this pretty simple question. When the U.S. files a trade petition, whether it is you or Mr. Gerard or the government, do you feel the process favors foreign respondents over domestic producers?

Mr. LONGHI. There is no question about it, Senator. And I would like to make sure that the timelines that you refer to are properly

addressed. This is not about one country or one company out there. This has been doing on for more than a decade.

So, when we are able to succeed against one rogue country out there, immediately somebody else is positioned to fill in that vacuum, and we have found ourselves, over a period of 15 years, where we cannot invest the necessary amounts to keep competing, to keep bringing forth the R&D that is required.

So this is why this is a generational issue that may destroy the industries that we have. You cannot survive. We just shut down two plants in the last month because of the issues that we are facing, and we cannot take 3 years, millions of dollars, to try to put together a case, especially with the highly sophisticated schemes that some of these companies and countries have in place today to circumvent our laws.

Mr. GERARD. If I could just add to what Mario said about that.

Currently in the world, there is an excess of 500 million tons of steel capacity. More than 35 percent of that comes from China. Almost 75 percent of it comes from Asian countries. And, if you go back 10 years, 10 years ago, the global oversupply of steel was 182 million tons. This year it is over 500 million, and this year China will produce 1 billion tons of steel—1 billion tons—when the world consumption is about 1.4 billion.

Do not tell me that they are not planning to put us out of the market. That is their plan.

Senator BROWN. Thank you for that, Mr. Gerard. And I will close.

I just particularly thank Senator Hatch again for his gentlemanliness, if you will.

The comments you made about the arduousness of this process—I have seen the coated paper industry in Ohio basically almost disappear, and paper industries in many of our States, with what has happened.

The chairman asked, I think, the right question: what do we do to make this process quicker? How do we self-enforce in a better way so there is not the damage to far too many of our industries, and the layoffs of too many workers, and the devastation of towns that have these paper mills, steel mills, and other production?

Thank you, Mr. Chairman and Senator Hatch.

Mr. GERARD. We will send a supplement to our presentation to answer that question.

Senator BROWN. We need real answers on that. That would be really helpful.

The CHAIRMAN. Thank you, Senator Brown.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Mr. Peterson, I share the concern about India's international property rights practices. Just last month I apprised Ambassador Froman—or pressed him, I would have to say, on why the administration was not pursuing our rights against India. Ambassador Froman assured me that once India's new government was in place, and it is a brand new government, he planned to increase engagement on these issues.

Now, I want to give the new government a chance, but I also want to make sure that there is progress. That is why I sent a let-

ter to Ambassador Froman this morning requesting that, immediately following the conclusion of their out-of-cycle review, they inform me in writing what actions are being taken to address these serious problems. Now, at a minimum, I would expect such action to include the development of a written, meaningful, and effective action plan with definite timetables for implementation.

Now, do you agree that India's policies are undermining U.S. holders of intellectual property rights and that USTR must take action to ensure that we see rapid progress from the new government in India?

Mr. PETERSON. Yes, Senator Hatch. I do agree that India's approach to intellectual property has been harmful to innovative industries, U.S. companies and others trying to do business in India. And I do believe that, and hope that, with the new Indian government there is an opportunity, with action from our government, represented by the United States Trade Representative, to make a real difference in a country that has been among the most challenging in the world for creators of innovative products.

Senator HATCH. Thank you.

Mr. Gerard, I have been very interested in your testimony here today.

Mr. GERARD. Thank you.

Senator HATCH. And you are a very good representative of the industry.

Intellectual property, in my opinion, is fundamental to the U.S. economy. It is just one of the things, but it is important. In my home State of Utah, in particular, more than half a million jobs and 67 percent of Utah's exports depend on strong intellectual property protections for their existence.

Now, I was pleased to read in your testimony that you too agree that we need to place a greater priority on intellectual property protection. You noted the link between intellectual property and production and manufacturing, which I think is important. That is why I am so concerned that U.S. holders of intellectual property rights find themselves under attack around the globe in places such as India and China.

As I mentioned in my opening statement, I have introduced a bill establishing a Chief Innovation and Intellectual Property Negotiator at USTR to ensure that protecting and enforcing intellectual property rights are not secondary issues, but are at the forefront of our trade policy.

Now, Mr. Gerard, what additional steps would you suggest that we can take to improve the U.S. response to the challenges we face overseas in the area of intellectual property rights?

Mr. GERARD. Let me say that I support your view about having a chief negotiator on intellectual property rights, and I think, as I said earlier, enforcement is a very important part of trade agreements, but we have to look at the trade agreement first. If you are enforcing a bad trade agreement, you are going to get bad results. But I agree that 70 percent of all patents come from manufacturing. By the way, most of R&D comes from manufacturing of one kind or another.

Senator HATCH. Right.

Mr. GERARD. Certainly, one of the things I would like us to investigate further is—you might have read a few weeks ago that a number of steel companies and our union got hacked by Chinese computer hackers, and we know what they were trying to steal. And I tell you that United States Steel, when you see those rolls, almost everything that they make did not exist 10 years ago. It is scientifically different. So all of those are different patents. If they can hack into our computer systems and steal those patents, there ought to be an economic penalty for that.

If that is something that the intellectual property negotiator does, that is fine, but we need to have, not only strong enforcement, but better trade rules. Ranking Member Hatch, I cannot stress how deadly it is that our trade laws mean that we have to lose jobs, lose market share, lose profitability, do all of that so that we can get a win at the International Trade Commission. Then, if they appeal that win to the WTO, as they could do with intellectual property, we continue to have our market destroyed.

And I give credit to U.S. Steel; they have continued to invest in the industry and modernize the industry against that onslaught, and I will not talk about how many hundreds of patents I know they have for the number of products they make. But a trade negotiator with an Intellectual Property Negotiator who would also enforce those laws would be useful.

Senator HATCH. Thank you. I have other questions for all of you on this panel, but my time is up. I will submit those questions in writing.

The CHAIRMAN. Senator Hatch, you were very gracious to all of us. Did you want to ask another question at this time? We will have a second round too.

Senator HATCH. Yes. I think that I will forego, because I will submit my questions in writing. But you have all been excellent, as far as I am concerned, and very helpful to the committee.

I am not sure I agree with everything in your statements, but by gosh, they have been very, very important statements, as far as I am concerned. But thank you for being here, and thanks for your patience in waiting for us while we voted those three times.

Mr. GERARD. Let me just say, before you leave, so that you know, our union has members in both the soybean industry and the chicken industry, and we are on their side too. [Laughter.]

Senator HATCH. You are everywhere. That is the problem. [Laughter.]

Mr. GERARD. Well, I saw you passing through the Pittsburgh airport. I thought you might stay. It is one of the greatest cities in the country.

Senator HATCH. Well, I happen to know a lot about it, since I was born and raised there and was a member of the AFL-CIO, by the way, and learned a trade.

Mr. GERARD. Come on back home. [Laughter.]

Senator HATCH. I am home. [Laughter.]

All I can say is, I have not forgotten Pittsburgh either. I was a young kid born under very trying circumstances, and Pittsburgh was a wonderful place to be raised, as far as I am concerned. But I am home in Utah, I want you to know that. It is a wonderful State.

We are sorry we lost our steel mill out there. We would love to have both of you out there again.

Mr. GERARD. Fix this, and we may come back.

Senator HATCH. Well, we will be looking forward to that. I certainly appreciate the way you have your eyes on the steel industry, Mr. Longhi. I am sorry that I did not have questions, but I will submit questions in writing, and we support you very strongly.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

The two Pennsylvania Senators arrived in order of appearance, but I understand Senator Toomey is very much under the gun.

Senator Casey, would that be inconvenient to you?

Senator Toomey, let us go with you.

Also, Mr. Gerard, you should know, apropos of the cyber-hacking matter, Solar World in Oregon was also cyber-hacked when they stood up for their trade rights. So it is an important point.

Senator Toomey?

Senator TOOMEY. Thank you, Mr. Chairman. And I thank my colleague, the senior Senator from Pennsylvania, for allowing me to go ahead in line here.

First, Mr. Longhi, let me just state something that should go without saying, but I think it is worth saying. I know that you are very sorry, as I was when I heard about the announcement of idling the plant in McKeesport. A lot of Pennsylvanians are going to be out of work as a result of that, and it is a very, very painful decision.

I just want to be very clear that your employees should feel free to reach out to my office so that we can help them in any way possible, navigating various Federal bureaucracies, dealing with unemployment benefits, whatever it might be. I hope you will make sure that they know that.

Mr. LONGHI. We appreciate your support, and that is in the works already.

Senator TOOMEY. Terrific. Thank you.

You spoke about the pending case against the imports from South Korea, and, as you know, I spoke with Commerce Secretary Pritzker about this very matter. But, as you alluded to in your testimony, there are some technical aspects to this, and specifically there is apparently a practice that has been highly refined by the South Koreans in creating corporate vehicles that allow them to hide information and make the investigation that Commerce needs to conduct very, very difficult for them, difficult for Commerce to get the facts that they need.

Could you please explain for the committee in a little bit more detail about how that works, what they are doing, and why that is so problematic?

Mr. LONGHI. Thank you, Senator. The simple version of that is that they have created a very sophisticated cross-shareholding structure through which information such as cost of production, research and development, marketing, logistics, transportation, and transactions in general occur in a very shadowy manner, so much so that when Commerce first made their assessment, they clearly stated in their preliminary report that they could not make sense of the information that was being provided to them.

Now, when you add to this dimensions of being tardy in responding to the requests of Commerce to explain some of the topics, and the way that they were managing them, and requests for delays, it reduces the time in which the investigators can properly do their investigation.

Also, what happens is that they are coming up with a very significant level of aggression in so many different products and fronts that, potentially today, two-thirds of all of the Department of Commerce investigators are being consumed in dealing with steel cases, again, reducing the ability for proper investigation to take place.

Senator TOOMEY. Just to follow up, you mentioned that, apparently, one of the tactics is intentionally delaying the time for responding to legitimate requests from Commerce.

Is there any recourse that Commerce has in this process? What do they do if they are getting stonewalled?

Mr. LONGHI. The primary flexibility that Commerce has is that, within their statute, they have discretion to slap a fee on top of the country that is not responding in a timely manner nor with clarity to Commerce's requests, which is one of the reasons why we are so very surprised when all of a sudden South Korea comes across with a 0-percent fee as a determination.

Senator TOOMEY. But that also suggests a possible avenue for going forward. If these delays are contributing to the inability of Commerce to come to that conclusion, then maybe there is another response that is appropriate. I appreciate the input.

Mr. Peterson, I wanted to just quickly touch on something I think you had mentioned specifically, as well as Mr. Gerard: the danger of ongoing cyber-attacks, including from China.

I think this is a huge national security issue, as well as a commercial concern. But as a general matter, I am very concerned about whether we have adequate IP protections in a wide range of industries.

You had touched on some of the challenges you faced with Canada. Is there anything that we can be doing here in this committee to help improve the dangers we face in that regard?

Mr. PETERSON. I think the key is to continue to keep focusing on enforcement, because, in the situation with Canada, just as an example, the agreement is clear, and one branch of the Canadian government, in this case the courts, has taken these actions. But by virtue of the fact that we do have the opportunity as a private company to be able to undertake the action that we have, we are able to protect our property rights if we are successful through that process.

So I think the encouragement of those kinds of enforcement mechanisms in free trade agreements is critical. And then the encouragement of strong statements and strong enforcement action by the USTR is what is key in these areas where we otherwise have good agreements, but they are being violated by the country that entered into them freely in the past.

Senator TOOMEY. Thank you. I want to thank the panel. Thank you, Mr. Chairman, and thank you, Senator Casey.

The CHAIRMAN. Senator Thune, Senator Casey was here ahead of Senator Toomey, but he gave way because of Senator Toomey's

schedule. Would it be possible for Senator Casey to go next, and then you would go right after Senator Casey?

The collegial Senator Thune—I thank you.
Senator Casey?

Senator CASEY. Mr. Chairman, thank you very much. I appreciate Senator Thune's indulgence.

It is good to be with all of you. I will direct my questions to this end of the table, if you do not mind, our other three witnesses.

Mr. Gerard, I wanted to ask you—I have known you a long time, and you and I have talked about this in one way or another. But one of the concerns that I have, when we step back from the current issues, is the challenge that you face on the question of illegal imports and all the adverse job impact and adverse economic impact that has.

I think we also have to step back and ask ourselves, do we not need, in addition to better enforcement and better strategies, do we not need an overall trade policy, what you might call a unified trade, manufacturing, and job-creation strategy, or maybe, for short, a real trade policy just like we have when it comes to national security?

A lot of Americans, if you ask them what our national security strategy is, you might hear variations, but most people would say that we want to promote democracy, we want to protect human rights, we want to make sure that people have basic rights, and we also want to make sure that we are undertaking efforts to track down and destroy terrorists before they come to us—things like that that we all kind of agree upon.

With trade, I am not sure we can enunciate that, and I am not sure our policy or our legislative enactments are consistent with our undergirded strategies.

So, if you had to design or articulate or outline what a policy would be for the United States of America on trade, similar to what I articulated as it relates to national security or defense policy, what would the pillars of that be, or what are the elements that you would put forth?

Mr. GERARD. Well, I guess this is probably a good time to quote Senator Obama before he became President, and what he said is that we ought to measure our progress on trade not by the amount of trade agreements we negotiate, but by the quality of them and how many jobs they create at home.

So, if I was to be able to help design a new trade policy—let me start off by saying that our union is not against trade. We are just against trade that is designed to give away our jobs. And, when I make the comment that, since PNTR with China, we have had a \$7-trillion trade deficit with China, that should say it all.

So I think that, starting down that path, we should be looking at developing our energy sector and our trade and our manufacturing sector so they are integrated, and looking at our education system.

If you look at what is happening now in the oil and gas industry, you would know that in Pennsylvania we had to go and put on special schools to get people trained to go into that industry, because we did not plan ahead. We did not have a strategy.

Now we are having to talk about exporting liquefied natural gas. We are not against exporting LNG, but we ought to take care of America first.

So I think you need an integrated strategy. Some people would panic, but I would call that an industrial strategy. Of the major OECD countries, we are one of the only countries that does not have a strategy.

So when you come to trade, I think, as I said in my testimony, enforcement is a very, very important component of that. We negotiate trade deals. We ought to demand that they be enforced. It is like imagining that you put up a series of stop signs in a school district, but you do not tell people to stop. You inevitably know what is going to happen, and I think this is a complicated question with a complicated answer.

But I would start by looking at our trade agreements and quit BSing us. Why do we need a trade agreement with Bernai? It has nothing to do with trade. It has something to do with the State Department.

So we need to have an honest discussion about what we are doing with trade, and is it really bringing jobs home.

Senator CASEY. Well, I appreciate that. I will submit some questions for the record for other issues.

But, Mr. Longhi, one of the concerns that you raise, when it comes to the fundamental challenge of illegal imports that lead to job loss, is what we have to do to engage with the Department of Commerce.

I know that a number of us have made it very clear to Department of Commerce Secretary Pritzker not just what our concerns are about, but what we hope and expect that they will do to be responsive.

I know we are at a point now where it is in the hands of Commerce and the International Trade Commission, but we will keep working together with you and with the steelworkers to put forth an ongoing strategy so we can continue to work together to prevent some of the job loss.

But I will try to submit some more questions to you for the record.

Mr. GERARD. If I could just say for the record, Mr. Chairman and members of the committee, I really want to thank you, Senator. As you said, you and I have been talking about this since way before you were a Senator, and you have been a champion for us, not just in the steel industry, but across a number of industries of manufacturing, and this is my first chance to publicly acknowledge it.

So thank you.

Senator CASEY. I appreciate it. Thank you.

The CHAIRMAN. Mr. Gerard, you should know that there are a lot of us in the Senate whom Senator Casey has talked about these issues with, and it reflects the urgency that you and Mr. Longhi are talking about, and we appreciate it.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. Thanks for having the hearing today. I think it is an important hearing. I appreciate the panelists who are here to testify.

I do wish, however, we were talking about enacting an updated and strengthened Trade Promotion Authority bill so that we could actually close some of these ongoing trade deals rather than simply talking about them. But that said, I am pleased the committee is holding the hearing, and I would agree that effective trade enforcement is an important component of any successful trade agenda.

Any administration, regardless of political party, should seek to ensure that our trading partners live up to their commitments, whether it is in the area of market access for agriculture or production or intellectual property rights. So I hope this committee, Mr. Chairman, will soon consider the Customs modernization bill that was introduced last year so that we can give our Customs agents at ports of entry better tools to enforce our trade laws.

Mr. Wilkins, it has been a year since China last approved a new type of biotech corn or soybean. I am very concerned about these barriers that some of our trading partners around the world are putting up in terms of sanitary or phytosanitary measures, and there probably is not a more important market to the people whom I represent in South Dakota when it comes to soybeans than is China. As you know, last year, 28 percent of total U.S. soybean production, which was worth over \$13 billion, was exported to China.

So tell me what you make of what they are doing now. Could you elaborate on what that is going to mean for soybean production and the soybean farmers in this country and then, also, how you believe the United States can best address that situation?

Mr. WILKINS. Thank you, Senator. The enormous amount of soybean trade with China is, in a way, a two-edged sword. They are a wonderful trading partner. Their people are having an increase in their standard of living. As their standard of living is increasing, the first thing they want to do is improve their diet, and what better way to improve their diet than with the miracle protein of soy?

The two-edged part of it is that the Chinese regulatory process is such that they will not begin to entertain the deregulation of a new biotech trait until the exporting country, which in our case is the United States, deregulates the trait.

The way that our efficient agricultural system in the United States aggregates production into an efficient infrastructure system, we fear that if we commercialize new traits that are approved in the United States, there is a possibility that those traits could unintentionally find their way in a very minute amount into a cargo destined for China. China could then use that unregulated trait as a way of providing an artificial trade barrier to manipulate market prices or to turn away cargos when it does not suit them to receive cargos.

The asynchrony of the global biotech deregulatory process is frustrating to us as farmers. We want the opportunity to be able to start to use these tremendous new genetic enhancements to our crops, allowing us to use less pesticides, allowing us to control our pests in safer ways, and to be able to continue to provide safe and abundant food for our trading partners around the world.

Senator THUNE. Well, I am interested in not only what is happening there, but also, as we look at the U.S.-E.U. trade agree-

ment, about the future of biotech and whether or not that ought to be part of the negotiated outcome there.

I believe that we need to ensure, as we negotiate that agreement, that it is as comprehensive as possible when it comes to issues of market access and regulatory cooperation. So I am just curious. Is that something that you believe ought to be a priority for the U.S.-E.U. trade agreement as well?

Mr. WILKINS. Absolutely. The renewable energy directive that the E.U. has established in the case for biofuels, that is hindering the export of our United States biofuels into the European marketplace.

Their labeling requirements of food stuffs that contain or may contain genetically enhanced molecules is an egregious point.

The European Food Safety Administration, EFSA, they review the biotech traits. They give them a clear bill of health that they present no concerns for safety, but the E.U. parliament's political system of not wanting to vote to approve new biotech traits is substantially hindering the advancement of agricultural production here in the United States.

Senator THUNE. Thank you.

Mr. Chairman, I guess I would simply say that, as we talk about these issues, it is really important that we tear down these types of barriers for a lot of reasons, of course, the obvious one being the health and economic vitality of American agriculture.

But there is also the issue that these types of biotech corn and soybean seeds that he is talking about, also significantly increase yields. You get greater productivity, and that is going to help us feed the world. And right now we are adding 70 million to 80 million people to the world's population every single year, and the American farmer is going to be looked to to help meet that demand, and this issue is really critical in that regard.

When you run into these barriers that are artificial barriers imposed by the Europeans and China and other countries around the world, it is going to be increasingly difficult for us, and it will be difficult for those other countries around the world that need the food to get it.

So I really hope this will be a priority for our negotiating teams in the U.S.-E.U. trade agreement, but also as we continue to try to drill down on some of these relationships that we have with other countries around the world, and specifically right now China, which, as I mentioned earlier, for over a year now, has not approved a new type of biotech corn or soybean. That is very problematic for agriculture, not only here in America, but, again, for the world's population.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune. You and I have been working on these trade issues for a long time, going back to the days when I was chair of the subcommittee and you were the ranking minority member.

I think about our work on low-value imports and Customs and the digital trade issue. And I am struck—and I am not sure you were here for this part of it, but it is something we have always worked together on, these bipartisan issues, trade issues in particular—that it was not a coincidence that we chose enforcement

today as our first issue after Mike Froman came to talk to us, because what I find again and again is, even in a State as dependent on trade as mine, so many workers, particularly middle-class workers, come up and say, "Hey, Ron, why are you talking about a new agreement before you enforce the laws that are already on the books with respect to the existing trade agreements?"

Of course, TPA is about facilitating new trade agreements, and my judgment was that, when we can work together in a bipartisan way to enforce what is on the books, we build credibility for the future trade challenges, and it has been great to work with you on these kinds of issues in the past, and I know we are going to do a lot of bipartisan work together on them as well.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. I first want to identify myself with your strong opening statement, which is that we first need to start with the enforcement of our trade laws. It starts with our existing trade remedies that we have, and, in too many cases, our antidumping laws or countervailing duty laws have been compromised through negotiation.

That is one thing we do not want to see happen. We want a strengthening of these laws, not a weakening. This is one of the areas where the United States has been a victim of being naïve at times, because—particularly on steel—we have entered into certain understandings only to find that as we reduce capacity, other countries increase capacity, then they dump into our market and we try to use remedies and they yell they cannot do it.

So it starts with enforcing and strengthening our current laws. But as you mentioned, and I just really want to underscore this point, we have expanded the trade agreements to go beyond traditional barriers. It used to be we would try to reduce tariffs, then we went to the non-tariff barriers.

Then we started recognizing that to have a level playing field for American companies, to help our competitive situation globally, we had to look beyond just the traditional trade issues, and we got into environment, we got into labor, and we thought that we could do either sidebar agreements or action plans and that that would be adequate.

And we did that. We did it in NAFTA. We did that in the trade agreements in our hemisphere, only to find that the countries violated those provisions, but there was no real enforcement. So the truck issues with Mexico or the labor agreements issues with South American countries went uncorrected, because there was no real enforcement within the terms that we negotiated.

I think the lesson that was learned from that is that, if it is going to work, you have to make enforcement part of the core trade agreement. You are going to need ways to try to resolve issues before you impose sanctions, but it has to end up with the threat and power to impose trade sanctions if it is going to be enforceable. I think that is the lesson we learned.

So now we are working on the Trans-Pacific Partnership, TPP, and the struggle here is that we are dealing for the first time with a trade agreement that deals with countries that are market economies—developed countries and developing countries.

In many cases, we hopefully are going to demand in these trade agreements that there be good governance so that our companies that will not participate in corruption are protected; that for countries that have state-operated enterprises, we make sure that their provisions for opening up these state-operated enterprises are actually done, and, if they are not, that we have enforcement; that we have anticorruption provisions; that we have government contract provisions to level the playing field. All of that is in good governance. We are seeing progress in the countries that are developing countries in TPP. But once an agreement is signed, if it is signed and ratified, past practice shows us that that progress will slow down, if not stop, unless there is enforcement in the trade agreement to make sure these countries carry out their commitments.

So that, I think, is the real lesson. And I know we had Ambassador Froman here, and we talked to Ambassador Froman about these issues. I think he understands it.

In the recent days, I have met with the prime ministers of New Zealand and Singapore, two countries that are part of the TPP, to urge them to understand that you are not doing anyone any service unless we have a quality agreement, as I think some of you have mentioned.

Mr. Brosch, I want you to know that on poultry, we have weighed in on the issues, and we have a major poultry industry in our State, and I thank you very much for your leadership on that. We are not going to forget the traditional problems that we have.

Mr. Gerard, you have been really our leader in trying to focus on where the priorities need to be in enforcement, and I know that we do not know what this agreement looks like. We have not even had a TPA bill here. But I would appreciate your help in identifying areas where we could advance true enforcement as we look towards these trade agreements.

Mr. GERARD. We would be happy to do that. I think the first area that you could move on is recovering Congress's ability to approve the agreement in detail rather than through fast-track.

We have seen what the results of fast-track are, and I think that Congress should have never ceded its authority to review those agreements and make sure they do what the President said that they should do, which is create jobs in America. Unequivocally, I challenge anybody to prove me wrong. We have had no net job gains from any trade agreement that has been negotiated since NAFTA.

So put that to the side. The one thing I do want to stress—it is good to see you. We lost one of the most important steel mills to the United Steel Workers Union in Baltimore, MD, and we lost that mill primarily because the trade laws do not work, and I say this with all due respect.

The other countries surge our market. By the time we file a trade case—and you know how many we file; you have been part of them. When we file those trade cases, we will win, but we have already lost a bunch, and they will come down a bit. Then they will nail us in another part of our industry in steel, and we will surge again and countervail again and subsidize again and we will file another case and we will win, and we slowly starve the capital until our companies cannot earn the cost of capital.

The only steel industries that are left standing in America were the strongest ones, and we are on the verge of—this is quite emotional for us in the Steelworkers Union. We are on the verge, if Commerce does not do the right thing, of losing the most important value-added part of the steel industry to two countries that have deliberately set about to cheat us out of our own market—China and South Korea.

So we are happy to help and submit more in detail in writing, because I think you are on the right track. But you have to recognize that you should not cede your authority to make sure the agreement does what it is supposed to do.

Senator CARDIN. I thank you for your testimony, and you know I agree with you on Bethlehem. That was a tragic loss for our country and certainly for our community.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cardin. You have made a number of important points, and I very much look forward to working with you on these issues and trade generally.

I think you could hear—and I say this to all of the witnesses—that Senators do feel strongly that our country needs rules in trade agreements that have teeth, and they have to be enforced. A variety of Senators have said it in a variety of different ways, but it seems to me that is what this is really all about.

I simply would close by saying, again, the topic of today's hearing was not randomly chosen. Trade enforcement is central to protecting what I call red, white, and blue jobs, and it seems to me we have made some headway here recently.

That is why I specifically referenced the rare earth minerals, the efforts at USTR. Mr. Gerard, we appreciate your involvement in this, and it is why I and others talked about making sure that unfair trade is identified and remedied sooner in the process, and what we have talked about here, at least a couple of times, is that there should be a more systematic system of identifying enforcement issues.

So you all have given us a big agenda, and really it is reflected in concerns all the way from the wheat fields of eastern Oregon, where we have been concerned about some of the agriculture issues that we have talked about here today and how those practices affect our State, to some of the steel mills that are thousands of miles away.

I think what we are united on is that enforcement, making sure that there are rules, number one, and meaningful rules, and that they are adequately enforced, is something that cannot be given short shrift. And it goes right to the heart of our ability in the future to grow things in America, to make things in America, to add value to them in America, and then ship them somewhere. Nowhere is this more important than Oregon, where one out of six jobs depends on international trade, where the trade jobs often pay better than do the non-trade jobs.

You all have, I think, laid out the enforcement issue very well, and we appreciate your patience with Senators, on a particularly hectic day, having to be out for votes.

I know we are going to be calling on you, and we are going to be calling on others who may not share your views, because I think

there is an opportunity here, and trade is so important to our country and to our economy.

We are determined to get it right. We are determined to get it right on a bipartisan basis.

With that, the Finance Committee is adjourned.

Mr. GERARD. Mr. Chairman, could I just—I missed one point, and I do not want to be an apologist for USTR, but a bipartisan increase in their budget so they could do more enforcement would be wonderful.

The CHAIRMAN. Very good.

[Whereupon, at 4:39 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

BEFORE THE U.S. SENATE COMMITTEE ON FINANCE

Testimony of

Kevin J. Brosch
BroschTrade, LLC

On behalf of
The National Chicken Council,
Washington, DC

Mr. Chairman and Members of the Committee:

My name is Kevin J. Brosch. I am an international trade lawyer and consultant here in Washington DC. I have specialized in agricultural trade for more than 30 years. I started my legal career in the international trade practice at Steptoe & Johnson, and spent ten years at the U.S. Department of Agriculture where I did trade negotiations in the Uruguay Round and NAFTA. I served as special trade advisor to Senator Lugar and the Senate Committee on Agriculture, Nutrition and Forestry in 1998-99; and have been in private practice for the past fifteen years working with the U.S poultry export industry and other agricultural clients. Today I appear before you on behalf of the National Chicken Council, the organization that represents companies that produce and process over 95 percent of the chicken in the United States. The 30-plus vertically-integrated firms that comprise the federally-inspected chicken industry, I can assure the committee, are a very dynamic, forward-looking and essential part of American agribusiness.

Chicken is one of our most important agricultural products, and one of our most important agricultural exports. The U.S. is the most efficient producer of poultry products in the world. U.S. production value in 2013 was \$30.7 billion. We are the world's second largest exporter, only narrowly behind Brazil, and in 2013 we exported nearly 20% of our total volume of production, with an export value of more than \$4.7 billion. U.S. poultry is our 6th most important agricultural export, with product being exported to nearly 100 countries each year. It has also been an important growth sector for U.S. agriculture with exports increasing from 5.2% of production volume in 1990, to nearly 20% in 2013.

The topic you have chosen for today's hearing, Mr. Chairman, -- Enforcement of U.S. Rights under Trade Agreements -- is an issue of paramount importance to the U.S. poultry industry. The U.S. poultry industry has long been one of the strongest advocates of free and fair trade, and has supported the efforts of both Democrat and Republican administrations to negotiate important trade agreements such as the Tokyo Round of General Agreement on Tariffs and Trade (1975-79); the Uruguay Round resulting in the World Trade Organization agreements (1986-1994); and the North American Free Trade Agreement (1992-94). The United States is the most efficient poultry producing country in the world

and the potential benefits from free and fair trade for the U.S. poultry industry are very substantial.

In general, trade agreements, both multilateral structures (e.g. WTO) and plurilateral free trade (e.g., NAFTA, CAFTA) have been a success story for the U.S. poultry industry. We have worked hard to support these arrangements and to expand our export trade using the trade liberalizing tariff rates and rules to our advantage. U.S. poultry exports have increased significantly over the past 20 years and our industry can attest to the benefits of having an aggressive and liberal trade policy.

In specifically addressing the issue of enforcement, I should begin by thanking the Obama Administration for a very significant and recent success. China is the best example we can point to of vigorous and timely trade enforcement. In 2009, China imposed antidumping duties on U.S. chicken using the so-called "weight-based cost of production" theory. (I will describe the problem with that dumping theory later in this testimony). Immediately after China announced its decision to impose antidumping duties, the Obama Administration requested dispute settlement, and aggressively litigated the case before the WTO. Last summer a WTO panel ruled in our favor. China elected not to appeal that decision and we are currently awaiting China's announcement of how it will change its antidumping decision to come into compliance with WTO rules. Hopefully, China will act in good faith and honor its WTO commitments, but there are no assurances. We expect an announcement in July.

We are grateful to this Administration for pursuing our rights in this case; to former Deputy USTR Isi Siddiqui who provided great leadership on this issue; and to the USTR legal team that, in coordination with the team of private lawyers who were paid by our industry to assist in preparation of the case, presented a very strong and coherent case. (Even with USTR's efforts, the China case cost U.S. industry millions of dollars in legal fees to pursue). China represented a 700,000 MT market for U.S. poultry at the time the antidumping duties were imposed, and is potentially an even larger market for our products in the future. We have been out of the market now for several years, and hope that China will lift its restrictions now that an international legal panel has ruled against it. In our view, the prosecution of the China antidumping case before the WTO represents U.S. trade policy at its best; enforcing those trade rights we have already negotiated for.

Unfortunately, not all unfair trade practices have been pursued this aggressively or this successfully. There have been some very significant disappointments and we have learned some difficult lessons over the past 20 years. The first is that enforcement of trade agreements must become more automatic and timely. Mexico has become one of our most important export markets with U.S exports now exceeding 300,000 MT annually. Several years ago, U.S. poultry exports became the target of an antidumping case in Mexico, which was also brought on the very dubious "weight-based cost of production" theory. The Mexican trade tribunal ruled in favor of its domestic industry and was poised to impose punitive duties on U.S. imports when Mexico was suddenly struck by a particularly virulent outbreak of Avian Influenza that resulted in the reported loss of more than 30 million chickens in Mexico. Because of the resulting shortage of poultry meat in its market, Mexico elected to hold the imposition of antidumping duties in abeyance.

While the U.S. currently continues to export poultry to Mexico, the threat that antidumping duties will be imposed when the Mexican Avian Influenza epidemic recedes remains a dark

cloud over our industry. As a result, we took action to challenge the Mexican decision under the terms of the NAFTA agreement. In this instance, we did not have to wait for our government to bring the case because, as you are aware, NAFTA rules include a private right of action by an affected industry. Our industry spent considerable sums on lawyers both in Mexico and in the United States to prepare the case. Our problem has been that, even though we have a private right of action, the NAFTA dispute settlement system depends upon the governments agreeing to the formation of a panel. Our case against Mexico was instituted nearly two years ago, and at present, we still do not have a panel to hear the case. It would seem that this would be a simple matter. We believe there is a significant problem here of enforcement that needs to be addressed.

There have been similar but even more troubling problems with enforcement under WTO rules. Prior to 1996, the United States enjoyed significant trade in poultry products with the European Union. In that year, however, the EU enacted new rules that prevented the U.S. from exporting chicken to Europe if the chicken had been processed using hyper-chlorinated water.

The use of hyper-chlorinated water to combat potential surface contamination of chicken has been standard practice in the U.S. chicken industry for decades, and has long been approved as safe and efficacious by U.S. regulators, specifically the Food Safety & Inspection Service (FSIS) of the U.S. Department of Agriculture. Every week, Americans safely consume approximately 156 million chickens that have been processed under FSIS rules. The FSIS system for poultry processing and inspection is the best and safest system in the world. It is a national embarrassment – and an insult to our citizens who rely on the FSIS system of inspection to protect their health -- that the United States continues to allow the European Union to block poultry imports from the United States on the grounds that FSIS-inspected chicken is somehow unsafe for European consumers.

The U.S. poultry industry asked that the EU be taken to dispute settlement as there was no scientific basis for the EU's restrictions on U.S. imports. However, in 1998, in the context of the U.S.-E.U. Equivalency Agreement negotiations, the United States agreed to forego insistence on our right to use hyper-chlorinated water in poultry processing, and agreed instead to provide the EU with scientific *dossiers* demonstrating the safety and efficacy of four alternative anti-microbial treatments that the industry could use in lieu of hyper-chlorinated water. The European Commission agreed to submit question of alternative anti-microbials to its scientific advisory committee within a year.

The EU did not do as it had promised. It failed to pursue this issue with its scientific advisory committee for nearly seven years. Ultimately several (but not all) of the proposed alternative anti-microbials were presented, and the EU scientific advisory committee opined that they were safe and efficacious and presented no health risk to consumers. However, when the European Commission presented a proposal for acceptance of the use of these anti-microbials, the EU Member States defeated that proposal 27-0.

The U.S. was excluded from the EU market for more than a decade and our government took no action until 2008 when, just a few months before the Bush Administration left office, it requested dispute settlement before the WTO. The responsibility for pursuing the case to its conclusions was passed to the incoming Obama Administration. After approximately one year of preliminary procedures, the case moved to the panel selection phase, and then came to a sudden halt. For reasons that have never been explained, the

U.S. and the EU have taken no actions to form a panel over the past four years, and there is no indication that our government is pursuing enforcement of the case at present.

Another longstanding problem has been with enforcement of our right against the Republic of South Africa (RSA). In 2000, the Republic of South Africa, a WTO signatory, began imposing punitive antidumping duties on U.S. poultry imports based on the economically unsound theory of "weight-based cost of production." Under this approach all parts of an animal are given the same value per unit of weight; and so, hamburger has the same value as filet mignon; pig's ears have the same value as pork loin; chicken paws have the same value as chicken breast meat. Clearly, this theory is economically unsound and, for several reasons, is legally impermissible under WTO rules.

The U.S. industry asked the Bush Administration on a number of occasions over eight years to invoke WTO dispute settlement, but no action was ever taken. In 2009, when the Obama Administration came to office, we renewed our requests but were told that this was a "cold case," too old for it to pursue at the WTO.

Prior to 2000, the U.S. industry had 55,000 MT in annual sales to the RSA. Given the rise in the number of middle class citizens in the RSA over the past decade, and the price competitiveness of U.S. chicken, that market would have grown substantially since that time. But because the U.S. has not challenged the RSA at the WTO and enforced our rights, the U.S. has been entirely shut out of the South African market for 15 years.

Had the United States pursued enforcement against South Africa, it would have prevailed. We are confident in saying that because the South Africa case presented substantially the same legal issue upon which the United States prevailed when it successfully invoked dispute settlement against China.

In 2000, about the same time that South Africa began imposing unfair and punitive antidumping duties on our products, Congress passed the African Growth Opportunity Act (AGOA), which gave preferential market access and lower import duties to about 35 African countries including South Africa. Our industry supported AGOA. But, for the past 14 years while South Africa benefitted from preferential duties under AGOA, it has simultaneously and unfairly excluded U.S. poultry from its market. Trade data show that in every year since 2000, South Africa has consistently benefitted from a trade surplus with the United States, generally in the range of \$1-3 billion annually. For 2012, the most recent year for which trade data is available, South Africa's exports to the United States are valued at roughly \$1 billion more than the imports that it accepts from the United States. See, <http://agoa.info/profiles/south-africa.html>.

In September 2015, AGOA will expire if not renewed. Congress will have to consider whether to extend those preferences in the future. In our view, South Africa's unfair and protectionist practices must be addressed before Congress would be justified in extending the AGOA program; it makes no sense for the United States to give special preferences to countries that treat our trade unfairly.

Finally, I would like to turn my attention to TPP and TTIP. Trade is a big part of the future for the poultry industry, and we are generally supportive of all major initiatives to promote free trade. But it can also be frustrating to support free trade initiatives only to discover later that the rights that were negotiated are not being effectively enforced. We must make

sure our existing agreements and processes work as well as possible; and, looking forward, we must insist that all new agreements provide strong market access and adequate systems to enforce that access.

With respect to TPP, our major goals are to get a strong commitment on enforcement, in particular in the area of sanitary and phytosanitary measures. We are aware that work has been pursued in this area with the hope of achieving an "SPS plus" chapter in the TPP; i.e., SPS provisions that are even better than those currently in the WTO Agreement. We support that effort; but, once again, stronger rules are only a benefit if there is timely, aggressive and consistent enforcement of those rules.

Our second major ambition in TPP is to see that the long-protected Canadian market is finally opened to trade. In our view, the Canadian market should have been opened to free trade as a result of NAFTA. If TPP is truly a free trade agreement, then there should be free trade in poultry between the United States and Canada, not just one-way market access for Canada.

We are frankly, less sanguine about the prospects for poultry under the proposed TTIP free trade agreement with Europe. The ban currently imposed by EU regulations on importation of U.S. chicken is not based on sound science and is inconsistent with WTO rules. TTIP would only be of use to our industry if the negotiations resulted in the removal of these SPS barriers that Europe has had in place for nearly 18 years. However, we have thus far seen no indication that Europe is willing to negotiate with the U.S. on these issues. Moreover, three weeks ago, at a political rally in Worms, Germany, Chancellor Angela Merkel vowed that she would never permit U.S. chicken to be imported into Europe. So much for free trade. The industry might have a more positive view of the TTIP initiative if the Administration had taken effective action to enforce our WTO rights. We have been shut out of the European market now for 18 years, and there is no current indication that the TTIP will remedy that situation.

In conclusion, Mr. Chairman, the question that you have asked by calling this hearing today is extremely important and timely. With the Administration actively negotiating new free trade agreements with Asia and Europe, one question that must be asked is how effective is the enforcement of the trade agreements that we already have. Trade is a big part of the future for the U.S. poultry industry. We are generally supportive of all major initiatives to promote free trade, but we must make sure both our existing agreements and new agreements provide not only strong market access but also adequate means to enforce that access.

UNITED STATES SENATE COMMITTEE ON FINANCE HEARING

**“Trade Enforcement: Using Trade Rules to Level the Playing Field
for U.S. Companies and Workers”
June 25, 2014**

Questions for Mr. Kevin Brosch

Questions from Senator Hatch

Question 1

In your testimony, you raised the EU’s discrimination against U.S. poultry products because of the anti-microbial wash that we use for our poultry products. U.S. chicken farmers and poultry producers were cut off from the European market in 1996, but I understand that if you had access to that market today, it’s estimated that annual sales would be in excess of \$600 million.

This is an important issue for your industry, and one that is ready for a dispute settlement action at the WTO. I know that’s true because the Bush Administration already prepared and filed that case at the WTO. Since the Obama Administration took office, however, the case has not been pursued.

Do you have any idea why the Obama administration has refused to continue a dispute already prepared and filed by the Bush Administration on this very topic? Why would the Obama Administration just let this significant trade concern drop?

Response to Question 1

Frankly, we do not know why the current Administration has not pursued the case against EU restrictions on the use of alternative antimicrobial treatment in chicken production. Unlike NAFTA where there are structural problems with the rules for choosing panels, the WTO rules are fairly straightforward. There is no reason for the unexplained delay in the case.

However, our problem with convincing our government to enforce our rights under the WTO has not, as I said in my testimony, been confined to this Administration. Indeed, we applaud this Administration for its action in the China case. Our problems with fair access to the European market began in 1996 when the EU established regulations that banned imports of chicken that had been produced using hyper-chlorinated water as an anti-microbial agent. Neither the Clinton Administration nor the Bush Administration took any action for nearly 12 years. When the Bush Administration did finally file a case, after eight years of inaction, it was just before it left office. Now we have inaction by the Obama Administration.

So the record indicates a reticence on the part of all U.S. Administrations to challenge Europe’s unfair restrictions. I would note that when the United States successfully challenged the EU in the Beef Hormone dispute, the EU never did bring its regulations into compliance. Perhaps there

is concern among U.S. policymakers that, even if we prevail in dispute settlement, the EU will simply ignore the decision, as it did in the Beef Hormone case, undermining the credibility of the WTO system.

But we think the pursuit of our case is important, not only for the U.S. poultry industry, but for U.S. confidence in trade agreements. If the EU will not honor its commitments under the WTO, why are we pursuing the TTIP agreement with them?

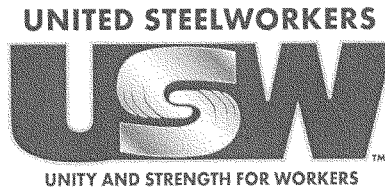
Question 2

Mr. Brosch, I don't expect this will be any comfort to you, but the unfair and discriminatory treatment your industry faces in South Africa is an experience you share with many other U.S. industries. In your testimony, you state that AGOA should not be extended until South Africa has addressed its protectionist policies.

We should not hold all of sub-Sahara Africa responsible for South Africa's actions, but would you support an effort to review South Africa's AGOA eligibility in light of its discriminatory trade practices?

Response to Question 2

We fully agree that we should not hold all sub-Saharan Africa responsible for South Africa's actions. We are not arguing that Congress should not extend AGOA for the many deserving developing countries in southern Africa; we are arguing, rather, that the Republic of South Africa and any other country that might also engage in clearly unfair trade practices against U.S. imports should not benefit from AGOA duty preferences until they change their ways. This could be accomplished in two ways: first, as you suggest, Congress may simply determine that RSA is no longer eligible for AGOA; alternatively, Congress could include, in the AGOA renewal language, specific provisions that conditioned AGOA benefits on RSA's permitting fair market access. We would be happy to work with your office, or with any other Senator, in crafting appropriate bill language



Testimony of

Leo W. Gerard

International President
United Steelworkers

Before the

Senate Finance Committee

Trade Enforcement Challenges and Opportunities:
Using Trade Rules to Level the Playing Field for U.S. Companies and
Workers

June 25, 2014

Chairman Wyden, Ranking Member Hatch, Members of the Committee. I want to thank you for inviting me to testify today on the critical issue of trade enforcement.

My name is Leo Gerard and I am the International President of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union – the Steelworkers or USW for short. There are 850,000 members of our union and we are the largest industrial union in North America.

Other than assembling cars and light trucks or airplanes, our members are involved in virtually every facet of manufacturing from hard rock and metals mining to fiber optics. They are employed by pharmaceutical and chemical companies, by tire manufacturers and glass companies, by farm implement companies and aluminum smelters, by tool makers and consumer goods producers. Across this great country, our members help keep American factories humming, buildings safe and secure, producing the critical fuels and machinery that keeps our nation moving in the air, on the ground and in the water, and providing secure and stable power supplies to every corner of the country. Roughly 350,000 USW members make products that may end up in a car or light truck ranging from tires and windshields to more “traditional” auto parts.

And, of course, we produce steel. Our members are the most productive steelworkers in the world, producing steel at less than one-man-hour per ton. Our steel plants produce one-third less carbon per ton of output than producers in China. Billions of dollars of investments have increased productivity, ensured the highest technology and the cleanest factories.

When many Americans think of steel, they think of an I-beam on a crane being lifted into place on a skyscraper. But, today’s steel industry, while still producing those basic products, also produces products at tolerances unheard of even a decade ago. When you go to a factory, you may see roll after roll of steel, thinking you’re seeing identical products. But, each may be produced to different tolerances with different metallurgic properties for countless applications.

Mr. Chairman, Members of the Committee. I’m sorry to say that by necessity I’ve become one of the country’s leading experts on trade enforcement. I’m pleased to appear before you today on the topic but, to be honest; I wish I had a positive story to tell you.

USW members and non-union workers alike know firsthand the pain inflicted by foreign predatory, protectionist and unfair trade practices. In industry after industry, they have seen other nations target the U.S. market to fuel their own economic policies, to create jobs for their people and capture the dollars of our consumers. These practices have increasingly resulted

in the downsizing of manufacturing and the loss of good family supportive jobs, as companies have offshored and outsourced their production.

The USW has been as successful as it can be in its efforts to counter unfair trade, but it's a losing game. Indeed, the only way we win is by losing. Lost profits, lost jobs, closed factories, hollowed out communities – that is the price the trade laws demand to show sufficient injury to provide relief. In the year or more it takes to bring a trade case and obtain relief, foreign companies can continue to flood the market. By the time that relief may be provided, the industry is often a shadow of its former self, too many workers have lost their jobs and their families and the communities in which they live have paid a heavy, and often irrevocable, price.

We've had to expend countless resources to bring these trade cases. In the past, that was often done with our employers. Today, more and more, we find that the USW has to go it alone.

Our government should be taking more of the lead. While we appreciate what they are doing, it is far from sufficient. And, let's recognize that some of the most successful efforts, like the Section 421 case on tires, were because the USW initially brought the case. We'd vastly prefer that government do *its* job so our members can do *their* jobs.

Mr. Hatch, it might surprise you to hear me sing the praises of former President Ronald Reagan. But, on trade, and I emphasize, on trade he was one of our best Presidents. He made clear that America was interested in trading with other nations but that he would deal, resolutely, with cheating and predatory practices. During his Administration, he helped support Harley Davidson, the auto industry, the steel industry and others. He responded to foreign targeting of our semiconductor industry by helping to create Sematech. He authorized the MOSS – Market Oriented Sector Specific – talks with Japan. We need similar action today.

This Administration has done more to improve our nation's trade enforcement efforts since any Administration since the Reagan years. We're proud of our work with them, and the President deserves credit for creating the Interagency Trade Enforcement Committee to focus more attention on the issue and ensure better coordination of effort. But, the problem is a Herculean one and we are still far from having the approach, infrastructure and resources that are needed.

Government must set priorities. And, to me, manufacturing has to be the single most important focus of our trade enforcement – and our job creating - efforts.

Today's manufacturing sector is not the smoke-belching, rust-belt of memories. Far from it. If you go into a steel factory today, you'll probably see more workers actively managing and monitoring multiple computer control panels than workers down on the shop floor. Factories across a broad spectrum of industries across the U.S. are a model of productivity, ingenuity and efficiency and are manned by workers with skills, creativity and a work ethic unmatched by our competitors. U.S. companies have invested billions of dollars in new equipment, new technologies and upgraded their facilities to produce the cutting edge products demanded by customers and consumers around the globe.

Mr. Chairman, Members of the Committee. You know the facts about the importance of manufacturing, but let me highlight a few:

- Manufacturing jobs pay significantly more, on average, than service sector jobs – 22 percent higher than the average compensation in service industries.
- The manufacturing sector accounts for roughly 70 percent of all research and development spending in the U.S. and a comparable percentage of patents.
- Manufacturing is a major contributor to the U.S. economy. The National Association of Manufacturers estimated that every \$1.00 in industrial output generates an additional \$1.37 of economic activity which is more than any other sector.
- Manufacturing has the highest employment multiplier of any sector with each manufacturing job creating three or more jobs, with some industries having a significantly higher multiplier effect.
- Manufacturing is critical to homeland and national security.

And, despite the fact that most staff and policymakers here in Washington have never worked in a factory and some have never stood on a shop floor, it is not surprising that the view here about the importance of manufacturing is dramatically different from the views held by citizens across this country. According to a bipartisan poll conducted on behalf of the Alliance for American Manufacturing that was released earlier this year,

- Voters reject the idea that manufacturing jobs can be replaced by high tech and service jobs by a 62-34 margin.
- 72 percent of voters are "worried the most" or a "great deal" about manufacturing job loss, a level of concern matched only by the federal budget deficit.
- 65 percent of voters consider outsourcing as the reason for a lack of new manufacturing jobs. Only 28 percent of voters cite a potential shortage of skilled workers for the lack of new manufacturing jobs in the U.S.
- 65 percent of voters would encourage manufacturing as a career choice, though only 25 percent strongly encourage such a career choice.

- Among voters who would not encourage manufacturing as a career choice, the top reasons cited were the desire to get a four year college degree and the belief that those jobs won't be there in the future.

I am, of course, passionate, about the importance of manufacturing to this nation's economy, not only because of the workers I represent, but because of a heartfelt belief that it is central to a growing, sustainable and more equitable economy. Every nation on earth aspires to be able to produce goods for its people and have a robust manufacturing sector. Some, of course, have not succeeded and, as a result, often are faced with an unsustainable and precarious future.

But, the hearing today is not about manufacturing, it is about trade enforcement. It is, however, the lens through which I view the enforcement issue. If manufacturing were not critical, enforcing trade rules would be less important.

Before I go into what I hope is a structured approach to the issue before the Committee today, let me highlight a couple of things.

First, as many of the Members of the Committee know, the USW is fighting to ensure that the Department of Commerce carefully review the facts in the Oil Country Tubular Goods (OCTG) case in which they issued a preliminary finding that imports from South Korea would not be subject to dumping margins. We believe this preliminary finding is flawed. Indeed, 57 Senators sent a letter to the Administration asking for a careful review and that effort was mirrored by more than one-third of the House joining in that call.

Korea only produces OCTG for export – the vast majority of which is targeted at the U.S. market. OCTG is the product used in advanced hydrocarbon extraction and oil exploration to bring the product to the surface. As our energy boom has expanded, the use of the product has as well. Unfortunately, U.S. producers have lost sales, laid off workers and announced indefinite closures of facilities producing the product because of dumping by Korea.

Commerce made critical mistakes in its preliminary finding. Indeed, the law provides for a preliminary finding so that the parties to the case can ensure that the facts are appropriately considered. In this case, because the product is only produced for export, and there is no domestic market, Commerce chose to use a very low margin product – essentially a low-grade type of construction pipe – for comparison purposes. While the discretion exists, that was not the intent of Congress in providing discretion to prepare a "constructed value" analysis. Their decision is just plain wrong and needs to be altered to help restore fair prices to the market.

The second issue, and a critical one, is the issue of currency manipulation. China is the worst culprit, but other nations are following their lead. China has been able to essentially subsidize its exports and tax imports into its market through currency cheating.

Everyone knows it. Every six months the Treasury Department issues a report saying that China isn't doing the right thing, it's not based on market principles but stops short of making the critical finding that would only require consultation. This Administration and the last said that dialogue and engagement were the appropriate course to pursue.

Some say that China is taking steps to bring its currency into equilibrium. They point to a widening of the trading bands. Well, China's currency is still dramatically undervalued and is a tool China uses to fuel its export-led growth strategy and limit imports into its market. China makes small changes when political pressure rises here but then goes right back to business as usual.

Some experts opine that asking China to do more will only destabilize its economy. Well, I'm sick and tired of American workers and domestic industries having to pay the price for China's trade and economic policies. The time for talk is over. If the Administration won't act, Congress must prioritize passing legislation to give private parties the power to seek relief from China's currency manipulation, or that of any other country. Congress must not leave town for campaign season before passing this critical legislation. If it can act earlier, great, but, at election time, this Congress will be judged by our members on whether they stood by their sides, or continued to allow China and others to cheat them out of their jobs and their futures.

Currency manipulation and the active OCTG case are just two of the critical issues that must be dealt with right now. Enforcement can't be divorced from what the rules actually are. Let's be honest. The USTR's principal focus is negotiating new trade agreements, not enforcing the ones that they've already signed. And, while the USTR is not the only agency with responsibility for trade, Commerce has always played a secondary role. And, indeed, the Administration's trade policy efforts – including enforcement – are overseen by USTR as it chairs both the Trade Policy Review Group (TPRG) and Trade Policy Staff Committee (TPSC). So, in essence, USTR determines what actions on trade – negotiations, implementation, monitoring and enforcement – take place.

Today, America's trade agenda sounds like an alphabet soup of initiatives: TPP, TTIP, BIT, EGA, TISA and AGOA to name a few. And, to me, that agenda is focused more on foreign policy interests than enhancing domestic production and job creation and retention. Indeed, last week Ambassador Froman at the Council on Foreign Relations highlighted that trade policy is a major tool of foreign policy and, earlier this year, at West Point, President

Obama identified that chief among America's core interests was maintaining the free flow of trade.

My experience has always been, first with NAFTA and with virtually every trade agreement since, that when it becomes clear to the Administration that touting their trade policies as promoting U.S. economic interests falls on domestic deaf ears, they turn to the "foreign policy card". This time, they're playing that card before the agreements are even done.

Again, we're here today to talk about trade enforcement. But, let's be clear: Trade enforcement is not a substitute for a good trade policy. Far from it. Enforcing inadequate trade agreements is like giving struggling students new air conditioning in their under-staffed school while their text books are 40 years old. It may make them feel good and comfortable, for the moment, but their long-term outlook for academic success remains grim.

Our nation's trade policies are in dramatic need of updating and reform. That, of course, is a separate topic as is the question of the Congressional procedures – fast track – that govern the delegation of Congress' Constitutional authority over trade. But, it is very difficult to separate the issues as they are inextricably intertwined. The underlying rules – the rules that are to be enforced – set the framework for compliance.

Let me provide a specific example. If a foreign nation, in a protocol of accession, negotiates terms that will forever preclude American companies from exporting to that market, or provides advantages to domestic producers there, it's not actionable. The entertainment industry often complains about lack of access to the movie theaters in China that serve its 1.3 billion citizens. But, in the original protocol of accession, the USTR agreed to limits on U.S. exports of movies to that market. It's just one of many examples of bad rules.

That, of course, doesn't reach many of the other existing rules, or those that are now being negotiated in the alphabet soup of trade agreements I mentioned earlier, which will lock the U.S. into rules that are far from the free trade ideal that proponents tout. The U.S. is the most open market in the world and foreign goods flood our market. Trade agreements, done right can help provide new export markets for our products and correct the terms of trade which, all-too-often are stacked against the U.S.

In 2008, then candidate Obama, speaking at the Steelworkers convention said, "success should be measured not by the number of [trade] agreements we sign, but the results they produce."

I couldn't agree more. Unfortunately, the results of today's trade policies are measured by unacceptably high trade deficits, shuttered factories and shattered dreams. Some may point out that exports are rising, and that's a good thing. But, they fail to mention that imports are rising as well and the difference means lost jobs, lost production, lower growth and rising income inequality.

It's like fans at the World Cup mentioning that Switzerland scored 2 goals and failing to mention that the France scored five. At the end of the day, everyone knows who won.

So, what role does enforcement play in all of this, and what should we do?

Our view is that there is a clear path forward to improving the enforcement regime. That doesn't mean that it will be easy to accomplish. It will take a coordinated and concerted action plan. It will require resources. And, it will require resolve.

But, in essence, the plan consists of the following steps:

1. Negotiate agreements that advance America's interests.
2. Implement those agreements aggressively.
3. Monitor compliance.
4. Enforce provisions where our trading partners violate the rules.

I've already discussed the first issue but, would be more than happy to go into much greater detail.

Implementation is key. That means preparing a comprehensive strategy to identify the commitments that our trading partners have made – multilaterally, plurilaterally, bilaterally or unilaterally – and keep them to their word.

That, of course, is not an easy feat. But, it should be a higher priority than it is today and, I believe, there are critical implementation enforcement opportunities that can be expanded or developed.

Right now, the question of whether the trade promises of our trading partners are being lived up to is, unfortunately, largely left to the private sector to follow. For major companies with substantial resources, and their armies of well-paid lawyers and lobbyists here in town, that may be acceptable. They have the resources, and the tools, to follow these issues on a daily basis and their teams often have access, at the highest levels, here in Washington to make sure they can bend the right person's ear.

But most of the rest of America isn't so fortunate. To a small or medium-sized entity, they may not know that an opportunity might exist, even though it's embedded in a trade agreement. And, if confronted by a market barrier overseas, they often decide that the rules are stacked against them, that it's too costly to fight another country and it's not worth pursuing.

Every barrier is a lost opportunity either to maintain or create a job here.

The first step in this process is ensuring that access to the commitments and the rules of trade is readily available, clearly defined and regularly reviewed.

During the consideration of Permanent Normal Trade Relations with Russia, the Steelworkers, working with Senators Brown, Schumer, Stabenow and Rockefeller and Congressman Mike Michaud, supported legislation – The Russian World Trade Organization Commitments Verification Act to provide specificity, accountability and transparency around Russia's entry into the World Trade Organization (WTO) and the terms of its accession agreement. The legislation was rather simple: It called upon the Administration to take the 800-plus page working party report and summarize it, identifying the commitments that were made and the schedule of their implementation. It then called upon the Administration to identify what specific actions Russia took to fulfill their commitments and, where there was non-compliance, what would be done about it. It left to the Administration the discretion to do nothing, but required them to publicly indicate that.

Sunshine is a great disinfectant. Let's publicize what's going on. Our view is that this approach would help ensure accountability. It would make the provisions of the agreement more accessible to those companies that don't follow the negotiations and may not know of an opportunity.

It would take the burden off the private sector from determining whether a provision has been implemented. It would have let Russia know that compliance and implementation mattered. Going forward, it can be an important tool with other agreements, especially complex, comprehensive agreements that may take years to fully implement.

Unfortunately, the Administration opposed the effort and Congress did not give it proper consideration. To us, it was a common sense approach. One official actually asked the question: "so, you want us to enforce every provision?" Yes. Otherwise, why are we reaching these agreements?

Second is taking the catalog of market access barriers published year-after-year in the annual National Trade Estimates report issued by the USTR as a plan for action. It's a

roadmap of the impediments US firms and their workers face in selling their goods and services overseas. Since it was first required as part of the 1988 Act, it has grown from more than 400 pages. If you track the report year-by-year you will find few items that are taken off the inventory, but more are added.

Why does Congress allow this? Why are we spending so much time trying to reach new agreements before we actually address the backlog of issues that continue to mount from existing agreements?

What are we doing to reduce the backlog of unfair trade barriers? That, to me, is a critical issue that Congress should make a priority. Some have suggested that we renew Super 301 authority and, in my opinion, that would be a useful step to require that we put a priority on addressing those actions that will make a real difference in terms of promoting domestic production and employment. But, that should be the start, not the end, of the effort.

When the Steelworkers work on developing new policies to address today's current challenges facing the manufacturing sector, often the first question we're asked by leaders here in Washington is "is it WTO legal?" I think that policy makers in many other countries ask the question: "how long can we get away with it?"

Under today's approach, the answer to that question is, all-too-often, a long, long time.

Take, for example, the case of China's prohibited export restraints. Under the terms of China's WTO accession, they were allowed to apply export prohibitions to 103 products. But, in 2014 they are applying export prohibitions on more than 346 -- all publicly listed. USTR did nothing to address this issue until for many years, bringing a case on a small subset of products. The US won the case at the WTO.

But, after winning the case, the Administration continued to review the facts. It was only after the USW filed a Section 301 case that included claims about China's export prohibitions on rare earth minerals and other products that action went forward. Today there are still another 162 products for which China's export prohibitions are clearly WTO noncompliant but are unchallenged.

And, as on other actions the USW has brought on clean energy technology and auto parts with China, many of the issues continue to remain under review.

We are still waiting.

As another example, under the terms of China's WTO accession, they were supposed to provide a notification of their subsidy programs. Twelve years after that requirement was scheduled to have been met, the Chinese still had not complied. The USTR issued a counter notification, which China has never responded to.

The USW is proud of its efforts in this area and has been public in commending the Administration for doing more than any previous Administration in making enforcement more important. There have been real successes, like in the Section 421 case on Chinese tires.

But, much, much, much more needs to be done. And, we can never let up. Right after relief ended under the Section 421, China resumed flooding our market with tires – dumped and subsidized tires. Just a few weeks ago, the USW filed an AD/CVD case against Chinese tires which have increased from about 24 million units to more than 50 million. Their market share has doubled. During that period, domestic production has gone down as China captured all of the market growth, and then some.

MONITORING

Another critical issue is data. What's going on? What does the data tell us? How can we do a better job of identifying trends and then follow up to determine whether changes in trade flows reflect basic competitive factors, increasing demand and changing market forces or are the changes something that bears further scrutiny?

The USW has proposed that the Administration update its approach to get with the times – the so-called “big data” approach. The Administration has the ability to harness numerous and disparate data sets that, taken together with proper analytical tools, might give us enormous insight into what's happening in markets around the world, with trade flows, with foreign trade and economic policies.

To the USW this is, again, just common sense – harnessing the information that we already have to identify challenges and opportunities. Again, to date, no one in the Administration has engaged us on this idea.

It also means ensuring that the data that is valuable continues to be available. There are efforts to rewrite the methodologies and change the reporting of data. One of those efforts is driven by the WTO which is seeking to have trade reported based on a value-added methodology. This approach raises not only important measurement issues, but also would dramatically redefine trade flows and undermine the operation of our trade laws. Maybe that's the goal of the WTO. But, it is an effort that must not be implemented any time soon, if at all.

On top of that, the Administration has eliminated or indicated that it will end the collection and publication of a number of sources of data vital to understanding the nature and impact of current trade flows as well as other critical information. For example, the Bureau of Labor Statistics announced that it will be terminating its export price series. Census terminated the Current Industrial Reports.

Another example is the issue currently under consideration by the Office of Management and Budget to change the definition and methodology used for the collection and publication of certain economic data. The proposal is known as “factoryless goods production.” Think about that term – producing a good without a factory.

Essentially, their approach would change the definition of who qualifies as a manufacturing entity so that an entity that merely designs a product, but has someone else produce it, even offshore, would be considered to be a manufacturing entity. A holding company, merely by assuming the risk, could be considered a manufacturing entity.

This is a complex issue and economists and statisticians are right to constantly seek out new ways to understand what's happening in the world around us. But, in this instance, I believe the approach is totally misguided and could have perverse and, potentially, devastating consequences.

Here's an example. Let's take the example of a smart phone company which contracts out all the production of its phone to a contract supplier in China. Let's assume that there are some parts that are exported by the company to China for inclusion in the phone. Today, the importation of that assembled phone would count as a manufacturing goods import. The net amount would be the value of the imported smart phone minus the value of the exported parts from the U.S.

But, under the OMB proposal, there would be no goods export recorded by the government and no import recorded. But, instead, there would be an import of services reported equal to the value-added component by the contract manufacturer – the value of the intellectual property embodied in the product. As I understand it, the reason for this is that the smart phone's ownership of the product didn't change as it was only a contract with a "manufacturing service provider". So, with just a flick of the wrist, manufacturing imports drop.

In the case of that product being exported from China to the EU, however, the value-added component of the contract manufacturer would count as a service export from China and the smart phone sold to the EU would be counted as a manufactured good export *from the United States*. In this scenario, manufactured exports from the U.S. would be recorded as rising. And the manufacturing sector in the US would appear to grow without any increase in actual manufacturing.

Someone needs to explain this and how it does anything other than skew the data and inflate our exports and reduce our imports. We are all for proper measurement of what's happening in the world economy, but this idea is far from ready for prime time and the implications could be dramatic, with significant repercussions. This proposal deserves significant study and attention and should not be rushed through the process.

In addition to what's happening in our government, the private sector is altering the collection and reporting of data making it more difficult to identify changing patterns of production and sourcing. As an example, Automotive News announced that General Motors will cease reporting North American auto production. We can only guess why GM is choosing that approach.

Just eliminating the data or changing how it's reported doesn't change the facts, no matter how hard people try. Too much of our production is being offshored or outsourced and our trade laws aren't doing enough to ensure that the rules are fair.

Another critical issue is simply using the words and actions of our trading partners to identify what they're up to. Sometimes, of course, it's difficult to discern or identify what they're up to. But, in many cases, they are quite open about it.

China is way ahead of others on this point. It has published its 12th Five Year Plan which clearly indicates what its priorities are and what it intends to do. It announced that it will spend \$1.5 trillion to achieve those goals. It has developed lists of national champions and strategic sectors that it will support. It has many other open source documents identifying technological roadmaps, performance stands, export credits in violation of OECD standards and countless other programs.

Why don't we take them at their word? Why aren't we taking those lists and determining what our interests are.

A perfect example was identified by the New York Times just last week. In the past several years, the U.S. has indicated that it wants to phase-out the use of incandescent lighting in the U.S. and move towards more energy-efficient technologies like LEDs. China has taken this technology, developed by the U.S., and created a mammoth production base to try and fill their own needs, and those of others around the globe. They are building up extensive capacity and can soon be expedited to flood the U.S. and world markets with these products that will probably be sold at dumped and subsidized prices.

Yet, no one acts. Isn't it time we took trade seriously and did more to build public confidence that trade agreements are in their interest rather than just pathways for companies to outsource and offshore production?

ENFORCEMENT

There's a reason that trade agreements and topics like fast track are viewed so negatively by the public. Trade isn't working for them.

The Steelworkers have taken action where we can and are proud that we have been the single-leading force in seeking to have trade rules properly enforced and that the terms of trade are fair. Since 2000, we have filed or supported dozens of cases. Among them are:

- Section 201 safeguard action on steel.
- Coated free sheet paper cases.
- Section 301 action against Chinese currency manipulation.
- Section 301 action on Chinese workers' rights violations.
- Section 301 case on Chinese protectionist and predatory actions on green technology.
- Identification of Chinese predatory trade practices in the auto parts sector.

- Section 421 case on Chinese tires.
- Oil Country Tubular Goods antidumping case.

We do not look at filing trade cases as a sign of success: Far from it. Under our trade laws, there has to be injury, often significant injury or threat of injury, before any relief might be offered. In essence, we win by losing.

A perfect example of this is the coated free sheet paper trade problem. The USW filed a case and, while dumping was found, the injury was determined not to be significant enough for relief. Several years later, we filed essentially the same case but, by that time, more than 7,000 workers had lost their jobs, capacity was shut down and companies were on the brink. Relief was provided and many of the remaining workers have their jobs as a result. But, a substantial portion of the industry will never come back.

These cases are difficult to bring and expensive to pursue. There are countless issues that must be addressed and, these days, many companies refuse to participate. Some refuse because they have offshored their production, abandoning the U.S. market and want to protect the subsidized and dumped products they now sell in the U.S. that they use to make here.

Other companies are worried about retaliation. Several years ago, in a sector that will remain nameless, an antidumping/subsidy case was being prepared that the Chinese found out about. The Chinese government called in the managers of foreign-invested enterprises operating in China in the sector and indicated that, if a case went forward, those companies' operating permits would be revoked. None of those companies, of course, dared come forward.

Under our trade laws, if a company refuses to provide data, it may be tough to develop the information needed to pass the injury test. So, as companies become more globalized, the workers, families and communities who are at risk from foreign predatory and protectionist trade practices may find that they have no recourse.

Those standards underlying how a trade enforcement case can be brought, who has standing, and other intricacies of the law need to be updated. For example, state and local governments should be given standing under our trade laws as participants. Often, the only entity that has standing under the trade law that actually cares about jobs in America are workers and their representatives. That's why the USW is the lead on so many cases.

But, state and local governments also care whether their local plants are being victimized by unfair trade. They should have the ability to be petitioners in trade cases. And

certainly, necessary information must be made available to injured parties and not kept secret behind corporate walls.

There are many other issues which the trade bar is working on deserving serious consideration by this Committee and the Congress. It's time to update our laws as they haven't been seriously reviewed in more than 25 years. And, it's vital that Congress recognize the damage that unfairly priced and traded imports have had all across this country. Importers don't care whether America makes anything, they only care about the profits they can make from the products they sell. It's important to view all of these changes by asking the question: "Whose side are you on?"

Enforcing our trade laws is in our nation's interests.

A study prepared for the Alliance for American Manufacturing by Greg Mastel, a former chief international trade advisor and economist for this committee, along with Andrew Szamosszegi, John Magnus and Lawrence Chimerine: *Enforcing the Rules: Foundation of a Sound American Trade Policy*, found significant benefits from trade enforcement. The study looked beyond the simplistic identification of the tariffs that might be applied, to the economy-wide impact of trade enforcement. The study examined 10 sectors from shrimp and garlic to lumber and steel. "In each case examined...the various costs of dumping and subsidies exceeded the pure increase in consumer benefits." In short, while there might be a lower price for a consumer shopping at Wal-Mart, the overall negative economic impact exceeds that so-called "benefit".

Today, U.S. manufacturers face new threats, ones that didn't really exist 25 years ago or, in some cases, even 5 to 10 years ago.

For example, the rise of Chinese State-Owned Entities, along with those in other nations, pose a significant competitive threat. SOEs aren't commercial entities they are driven by the goals of their home countries. So, in some industries, a SOE that comes here and produces might be able to help block a trade action. They should be precluded from doing so, or there should be a rebuttable presumption that they are acting on behalf of the state and their interests will not be protected by our trade laws.

And SOEs that come here and create greenfield facilities pose unique challenges. The SOE receives support from the state often in the form of low, or no-cost, loans, reduced priced inputs and other forms of support. If the products produced by those entities were to be traded across our border, the trade laws could, potentially, provide some relief. But, if the SOE invests here, as they are increasingly doing, there is no existing effective legal remedy to address the competitive challenges facing U.S. firms. The USW proposed an approach on

this issue but, I'm sorry to say, more than a year later we are still awaiting a reaction from the Administration.

Now, we also face a cyber-threat that is robbing America of tens of billions of dollars in intellectual property and opportunity every year.

Recently, the federal government indicated 5 Chinese individuals for cyber espionage. Six victims were identified in the case, including the Steelworkers. As the matter is before the courts, I will not comment on any specifics of the issue.

But, some have asked what next? While we would hope that the alleged Chinese hackers would present themselves to the authorities to give them their day in court, I'm not going to hold my breath. And, while the indictments vindicate those who have been highlighting China's use of every tool in the tool box approach – legal and illegal – to gaining a competitive advantage, we take little pleasure in that fact.

My view is that we should be using our trade laws to "reach" those who actually profited from the cyber espionage. The indictment identifies "tasking order" – the actual requests from Chinese companies for information to assist them in their commercial activities. The products of those companies, their exports to the U.S. market, the contracts they may have won, the value of the IP they stole should all be actionable under today's trade laws and, if not, Congress should quickly update our laws.

Congressmen Doyle and Murphy offered an amendment in the House which asked for a report by Commerce, USTR and the ITC on what existing authorities they have to confront this challenge. It also asked them to provide information on what authorities might be appropriate if they felt that current law did not give them the tools they needed. The amendment was withdrawn because of a potential point of order but it is a vital approach to giving our government, and those injured by economic cyber espionage, the tools they need to seek compensation and, hopefully, make clear that it's got to stop.

We all know that, in this time of tight budgets, that government funds are not easily found. But, in my opinion, there is a significant return on each dollar of investment in trade enforcement. Some of which was identified in the study I mentioned earlier by the Alliance for American Manufacturing. But, the impact is much greater. Greater corporate profitability. More jobs and more income. Greater research and development. All leading to higher tax revenues, lower transfer payments, greater economic growth and activity.

Indeed, every billion dollars of trade deficits costs thousands of jobs and reduces U.S. economic growth. So, starving our enforcement infrastructure of the resources needed to

implement, monitor and enforce our trade policies and laws may be penny-wise, but is certainly pound foolish.

Congress should provide statutory authority to the Interagency Trade Enforcement Center created by President Obama and aggressively fund it, along with other agencies and offices responsible for trade enforcement. Those funds make a difference.

Congress also has a role in all of this, not just in terms of direction, funding and oversight. The Congress – especially the Finance and Ways and Means Committees, have authority to call for the initiation of cases under a number of sections of our trade laws. Congress should use those authorities. Certainly, this Committee doesn't want to be a "help desk" for every company or worker with a trade complaint. At the same time, the Committees must do more to utilize their authority to act, when an Administration doesn't.

Let me turn now to the critical issue of workers' rights. This is not just an issue for organized labor, although we certainly have been its greatest proponents. Free trade is supposed to be conditioned on free markets and allowing workers to bargain collectively, freely associate and strike are all part of what a free market should provide. Each "input" should be able to obtain a just return.

Unfortunately, too many companies scour the globe looking for the cheapest place to produce, even it means despoiling the environment or trampling on workers' rights. Proper enforcement of workers' rights helps create opportunity, helps ensure a growing middle class, helps reduce the economic divide and, indeed, promotes *greater* trade.

The fight for workers' rights being treated appropriately in trade agreements is far from over. The so-called May 10th Framework might have been a step forward, but there is still a long journey ahead for workers to have internationally recognized rights exist not just on paper, but in practice.

Enforcement, however, can send a message to other countries that the U.S. is serious about obligations and commitments in this critical area. Only one workers' rights case, outside of the NAFTA context, has been brought forward by an administration and that case was initially filed by the AFL-CIO against Guatemala 6 years ago. Just recently, another extension was granted in pursuing the case. Much more needs to be done.

There are several approaches that could help. First, any free trade agreement must be accompanied by resources and resolve. First, in any country where the basic rules and operations in this area are not deemed sufficient, there should be additional State and Labor Department officials funded to provide on-the-ground assistance to facilitate the changes that

the domestic labor rights experts deem is necessary and they should provide support and advice to existing and nascent trade unions. This should be coupled with a regular review – every six months – of concrete actions they have been taken and what else needs to be done. These reports should not simply proclaim that “progress is being made” but should be specific in their analysis and recommendations.

In addition, labor rights should be given greater attention at both the USTR and DOL. The people who work at DOL and USTR are all well-meaning but Guatemala is not the only labor rights violator with whom we have a FTA. Colombia, South Korea and many other countries demand attention.

We must also place a greater priority on intellectual property protection. Some find that strange coming out of a labor leader’s mouth. But, the linkage between intellectual property and production is clear. Researchers, inventors, scientists all want to be close to the shop floor to help ensure that their ideas will become reality. And, for a company that may want to invest half a billion dollars in a plant to produce a new product based on a single, or set of patents, they will want to know that they will get a fair return on their investment. If not, they might as well license it with, more than likely, production to occur offshore.

So, for me, intellectual property *is* a manufacturing issue and I look forward to working with the Members of this Committee and Congress in trying to develop more effective policies and actions to ensure that America’s IP is adequately protected.

Mr. Chairman, Ranking Member Hatch, Members of the Committee. Once again, I want to thank you for the opportunity to testify. Enforcement is a critical issue and the USW has experience in this area that we wish we didn’t. Despite the length of this testimony, I must admit that I have more to add and other approaches and ideas to offer. We stand ready to work with you to update and reform our laws, identify new approaches and argue for the resources that are necessary to ensure that the trade deals that are reached on behalf of our people and the laws that are passed are put to good use.

But, as noted, trade enforcement is dependent on the quality of the agreements that the Administration negotiates and the laws that are passed by Congress. A bad agreement, no matter how well it’s enforced, will yield negative results. Today’s policies have added to the decimation of America’s manufacturing base where more than 5 million workers are still out of work since 2000 and more than 60,000 factories have padlocked their gates. To be a strong country, to ensure a strong middle class, manufacturing is vital and trade policies are a critical element in the success, or demise, of our manufacturing sector.

Thank you.

SUBMITTED BY SENATOR GRASSLEY

**NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

1301 Pennsylvania Ave., NW, Suite #300 • Washington, DC 20004 • 202-347-0228 • Fax 202-638-0607

June 25, 2014

Senator Charles E. Grassley
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley,

On behalf of the National Cattlemen's Beef Association (NCBA), the nation's oldest and largest national trade association for cattlemen representing more than 140,000 cattle producers nationwide, I seek your support in correcting the ongoing trade restrictions that are placed on U.S. beef exports. NCBA is producer-directed and consumer-focused and represents all segments of the beef industry. Our top priority is to produce the safest, most nutritious and affordable beef products in the world. This has been consistent throughout our industry's history and in our long-term efforts to continually improve our knowledge and ability to produce beef products to meet consumer preferences.

The U.S. beef industry has traditionally exported 10 to 15 percent of our products and we expect that percentage to rise as more consumers are exposed to U.S. beef in other countries. Fortunately for us, international consumers are often willing to pay premiums for cuts and variety meats such as tongue, livers, short ribs, skirts, and stomachs that are not as valuable in the U.S. market. In 2013, foreign consumers purchased 1.17 million metric tons of U.S. beef and beef products at a total of \$6.1 billion. In addition to beef and veal, we also export hides and skins, tallow, live cattle, semen, embryos, and even rendered cattle. If there's a market demand for any part of the animal we do our best to meet it.

Unfortunately, U.S. beef exports continue to be plagued by arbitrary guidelines not based on science and it has resulted in lost profits for U.S. beef exports across the globe. According to CattleFax, the U.S. beef industry lost nearly \$22 billion in potential sales through 2010 due to BSE bans and restrictions around the world. The U.S. beef industry has taken great strides to re-open markets and promote U.S. beef in Asia. As the middle-class grows throughout Asia, consumers are switching to a protein-based diet. Unfortunately, U.S. beef faces age-based restrictions and high tariffs that prevent us from meeting the growing demand for beef in Asia.

Without question, one of the greatest developments for the U.S. beef industry was Japan lifting their age-based restriction on U.S. beef from 20 months to 30 months on February 1, 2013. Prior to that time Japanese protocol limited imports of beef from the U.S. to cattle slaughtered before they reached 21 months of age. The removal of that arbitrary trade barrier caused the sale of U.S. beef to climb from \$4 million in 2004, to \$1.39 billion in 2013. Japanese consumers want U.S. beef, and the removal of the age-based restriction will further encourage our sales to grow.

The Trans-Pacific Partnership (TPP) is an ambitious, 21st-Century trade agreement that includes Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States. NCBA believes that the TPP has the potential to open a number of export opportunities for U.S. beef and expand our presence in Asia. NCBA has been strong supporter of our government's efforts to push for tariff elimination and strong science-based standards among all TPP nations for as long as the U.S. has been part of

TPP. Prior to the addition of Canada, Mexico, and Japan; NCBA strongly stated that all TPP countries and any future additions must abide by the same terms as all other TPP nations. For many months, our negotiators were making progress, but unfortunately Japan has been unwilling to abide by the same principles of free trade as all of the other TPP countries and they are digging in and are refusing to negotiate on products they deem politically "sensitive". This is discouraging and I fear it will be detrimental to the entire process. We encourage you and other members of our government to remain vigilant and to continue to push the Japanese toward tariff elimination on beef. The U.S. beef industry cannot afford to be handed a deal that resembles anything close to the terms given to the Australians. Under the Japan-Australia agreement, Japan will reduce its massive 38.5 percent tariff on frozen beef to 19.5 percent over 18 years, and reduce the tariff on chilled beef from 38.5 to 23.5 percent over 15 years.

NCBA continues to support our government's efforts and we appreciate the hard work of our negotiators, but NCBA's ultimate support for the TPP hinges on the terms of the deal. Make no mistake; the U.S. has been accused of taking similar action on sensitive products and we know exactly what happens in this situation—beef always gets the short end of the stick.

Senator Grassley, it is time to end the era of protectionism. It is time for all TPP countries to eliminate all tariff and non-tariff trade barriers. We thank you for your continued support and leadership in breaking down barriers for U.S. beef exports, and we encourage you to hold accountable all parties involved in the negotiations.

Sincerely,

A handwritten signature in black ink that reads "Bob McCan". The signature is written in a cursive, slightly slanted style.

Bob McCan
President, NCBA

**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER
U.S. SENATE COMMITTEE ON FINANCE HEARING OF JUNE 25, 2014
TRADE ENFORCEMENT: USING TRADE RULES TO LEVEL THE PLAYING FIELD**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today issued the following statement regarding the Finance Committee hearing on trade enforcement:

Thank you, Mr. Chairman, for holding this hearing. Today we are examining the role of trade enforcement in advancing U.S. international trade interests.

Some of the most important trade enforcement tools we have are U.S. safeguard, anti-dumping, and countervailing duty laws. For companies like U.S. Magnesium, which operates in Salt Lake City and Rowley, Utah, our trade laws are essential to their ability to compete against imports that unfairly benefit from foreign government interference in the market.

I want to ensure that these laws remain effective tools in our international trade arsenal.

That is one reason the Bipartisan Congressional Trade Priorities Act which I introduced with former Senator Baucus in January includes – as a principle negotiating objective – a directive to preserve the ability of the United States to rigorously enforce our trade laws.

I also want effective trade enforcement at the border.

That's why I worked with Chairman Wyden to craft a version of the ENFORCE Act that gained unanimous bipartisan support in the Finance Committee. This bill provides new tools to help stop circumvention of our trade remedy laws.

Legislation I introduced with former Senator Baucus in 2013 to reauthorize U.S. Customs and Border Protection includes the ENFORCE Act, in addition to a number of other tools that will help stop the entry of counterfeit and other illegally shipped goods into the United States.

I hope the committee will act on that bill soon.

While we work to ensure that our nation has the tools to battle unfair trade practices domestically, we also need to create effective multilateral and bilateral systems to help us enforce our rights abroad. When used well, the World Trade Organization dispute settlement system has proven to be an effective forum.

Senator Portman, when he was the U.S. Trade Representative, brought the first WTO dispute against China in which China was found to have breached its WTO commitments. Before that case, China was imposing restrictions on imports of U.S. auto parts that were harming U.S. companies and workers. By effectively employing the WTO dispute settlement system, we were able to get China to reverse course and remove those restrictions.

As you can see, we have a system that works.

Of course, the effective use of the dispute settlement tools at our disposal depends upon the proper prioritization of enforcement efforts by the administration.

I remain disappointed in the Obama Administration's failure to bring a single case against Russia since they joined the WTO.

When Congress considered legislation granting Permanent Normal Trade Relations to Russia in 2012, the administration argued vigorously that we needed Russia in the WTO so we could bring them to dispute settlement when they violated international trade rules.

Ironically, Russia recently announced that they would pursue a WTO case against the United States, while our administration refuses to act, even though Russia has repeatedly violated WTO rules concerning sanitary and phyto-sanitary practices, intellectual property rights, and localization barriers.

I am similarly disappointed when it comes to the administration's enforcement of intellectual property rights abroad.

Despite Canada, Chile, China, and India's rampant and repeated disregard for their obligations regarding intellectual property rights, the Obama Administration refuses to bring a single case against any of these countries' practices, sending a signal not only to these nations but the rest of the world that this administration will not act to protect U.S. holders of intellectual property rights abroad.

I also remain deeply disappointed in the Obama Administration's selective implementation of our trade agreements with Colombia, Panama, and South Korea, time and again choosing labor over innovation.

For example, Panama was forced to make statutory and regulatory changes to its labor laws before the administration would even submit that free trade agreement to Congress for approval. In the case of Colombia, the administration required the Colombians to make changes to their labor regime that weren't even required by the free trade agreement before sending the agreement to Congress.

Contrast this with the case of the Korea Free Trade Agreement, where the Obama Administration allowed the agreement to enter into force knowing that the Koreans had not created an effective and fully independent review mechanism for pricing and reimbursement of pharmaceuticals and medical devices. In my view, they squandered the leverage of entry into force, and now we face an uphill battle to bring Korea into compliance.

We should not tolerate similar practices going forward.

That is why the Trade Promotion Authority bill that former Senator Baucus and I introduced contains strong new oversight mechanisms that will help ensure full implementation

and effective enforcement of our trade agreements. I intend to make absolutely sure that each country with whom we have a future trade agreement is fully in compliance with that agreement before the agreement enters into force.

We must also do a better job protecting U.S. innovation. That is why I introduced legislation to create a Chief Innovation and Intellectual Property Negotiator in the Office of the United States Trade Representative. This individual would ensure that intellectual property rights are no longer an afterthought but a key component of our trade and enforcement policies.

Now, strong enforcement of existing obligations is vital. But, we also need to be pushing boundaries, constantly developing and negotiating international rules to counter unfair trade practices with new, high-standard trade agreements. Again, our bipartisan Trade Promotion Authority bill achieves this, addressing currency practices, digital piracy, digital trade, cross-border data flows, cyber theft of trade secrets, localization barriers, non-scientific sanitary and phyto-sanitary practices, state-owned enterprises, and trade-related labor and environment policies.

Many of the tools I mentioned today will only be effective once they are put into law, so I hope the committee will soon act on these pending trade bills, so that we may provide the American people with the best, most up-to-date and effective enforcement regime possible.

Again, Mr. Chairman, thank you for holding today's hearing. I look forward to hearing from our witnesses.

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**United States Senate Committee on Finance
Testimony of Mario Longhi
President and Chief Executive Officer, United States Steel Corporation
June 25, 2014**

Good afternoon, Mr. Chairman and other distinguished members of the Committee.

My name is Mario Longhi, and I am the President and CEO of United States Steel Corporation.

Thank you for this opportunity to share with the Committee the significant role our nation's trade laws play in the business of the American steel industry.

I am proud to be here with Leo Gerard, International President of the United Steelworkers. Together we bear the shared responsibility of ensuring our workers have a fair chance at working in a fulfilling job and living a fruitful life. In addition we work together helping the industry survive and thrive into the next century.

The American steel industry is currently producing materials for both the 21st century technologically sophisticated demands, as well as the fundamental building requirements for developing nations.

As a company we are meeting the challenges of global overcapacity and, while we are heartened by the myriad initiatives to spur economic recovery and create sustainable growth, we have undertaken the difficult but appropriate steps of righting our own ship to ensure the viability of our company's place in the market.

However, all the restructuring and realignment of a business cannot stem the tide of foreign companies attacking one of the most successful and vital global markets in the world – the U.S. manufacturing industry as a whole. These foreign companies are gaming the system and distorting the market with products dumped with the sole purpose of undercutting and harming the industry in general and my company specifically.

The approach and manner in which foreign companies are dumping thousands of tons of products into the U.S. market leads business leaders such as me to conclude that American steel companies are being targeted for elimination.

As the CEO, I spend a great deal of my time working to provide good paying, middle-class jobs in America. This requires the constant identification, quantification and planning for every possible variable in order to keep our business operational and competitive. The single most

disturbing variable that cannot be quantified or controlled for is foreign companies not playing by the rules.

So it is timely to be here this afternoon to share with you our experiences with America's trade laws and to highlight the vital need for consistent, full enforcement of those laws.

There has been a judicious effort by some of our elected officials to address the circumvention of U. S. trade laws by foreign companies, and to tackle the pernicious effects of global overcapacity, which suffocate our industry.

Mr. Chairman, your leadership in introducing the **ENFORCE** legislation is most welcomed. We concur that the Customs and Border Protection Agency should be empowered and strengthened to take swift action when dumping or countervailing duty orders are evaded through transshipment, misclassification, misreporting, or outright falsification of import documents.

This should be one of many tools in our trade toolbox.

Our immense gratitude is also extended to Senators Sherrod Brown and Rob Portman for their continued leadership and commitment to our industry. We are also very thankful for the introduction of legislation to address currency manipulation by Senator Brown and Senator Sessions, a critical initiative which must go hand-in-glove with any trade promotion authority, as well as other measures to strengthen our trade laws and align the application of those laws with the statutory intent.

These initiatives and others are desperately needed to level this American playing field. I have used these words often of late.

I came to this great country when I was a teenager. My parents wanted me to learn, live and sleep under the blanket of American freedom, to understand and live by the rule of law and embrace the American sense of fair play. I've lived the American Dream, and am privileged now to lead an American institution, a company nearly 115 years old that remains the largest American-headquartered integrated steel producer, with a rich history woven into the fabric of American life.

Each day, U. S. Steel employees work, relying upon our government to enforce the trade laws that will allow companies like ours to grow and prosper.

Our fate is intertwined with the effective, conscientious work of departments like Commerce, and adjudicatory venues like the International Trade Commission and the World Trade Organization.

So phrases such as: Rule of Law, Level Playing Field and Fair Trade are not sounds bites. These words embody the American promise. These are fundamental truths that we believe have been written into our laws.

The laws of this country can and should be used to help the rest of the world better understand fair play. Specifically, we must clearly showcase that when our trade laws are followed, companies around the world can succeed in the global marketplace – showing that when everyone follows the rules, everyone can compete and win. But this must be done under the rule of law.

Unfortunately Mr. Chairman, this is not the world in which we operate.

According to the United States Trade Representative, there are currently 56 pending antidumping (AD) and countervailing (CVD) cases, of which 73% involve steel products.

There are 117 existing AD and CVD cases, of which 40% involve steel related products.

These are cold statistics. We live them each day.

At any given time, our industry is pursuing over 30 active anti-dumping and countervailing duty cases against an ever-growing list of foreign competitors who are supported – tacitly or openly - by their own governments.

The litigation financial burden is borne by our employees, customers, and communities...and often our workers pay the ultimate price.

When the rules are ignored, circumvented or broken, all Americans lose.

We are not looking for a hand out.

In 2013, manufacturers contributed \$2.08 trillion to the American economy - that is 12.5 percent of GDP. Manufacturing supports an estimated 17.4 million jobs in America. More than 12 million Americans – or 9% of the workforce – are employed directly in manufacturing.

In 2013, almost 150,000 jobs were directly attributed to the steel industry. Within the value chain, it is estimated that more than 1 million jobs are steel-related jobs.

So when our industry is harmed, so too are the local vendors, markets, restaurants, dry cleaners, and other local service providers, schools and community organizations.

Let me illustrate for you how this harm occurs.

There are many ways in which foreign companies and governments have learned to circumvent and abuse our system of laws. A good example is a pending case involving companies from South Korea as well as eight other countries.

A year ago, U. S. Steel and other domestic Oil Country Tubular Goods (OCTG) producers filed a trade case against nine countries based on the enormous **113-percent** increase of imported OCTG products into this market between 2010-2012. Primarily South Korean companies are the main violators, but companies from India, Vietnam, Turkey and several other countries also dump very significant volumes.

OCTG are steel pipes used in the extraction of oil and natural gas, contributing to our nation's economic and energy security. OCTG is one of the most sophisticated, high tech products that we manufacture and must meet the highest safety and quality standards.

China tried to do the same thing in 2008. We fought and won an OCTG dumping case in 2009, but not before many facilities were idled, thousands of steelworkers lost their jobs, and our communities and our families sustained significant and long-lasting injury.

After we won the case, Chinese producers essentially abandoned the U.S. OCTG market, a clear sign that they could not compete when the playing field was leveled.

As the American economy and our energy demands rebounded, American steel companies spent billions of dollars to improve OCTG facilities across the country.

In the past 5 years, U. S. Steel spent more than \$2.1 billion across our facilities, \$200 million on new facilities at our Lorain Tubular Operations in the last two years alone.

However, the respite for the OCTG industry from illegally dumped products was short-lived. Foreign producers quickly seized this opportunity and began flooding our market.

The only difference between 2009 and today is that South Korean and other foreign OCTG producers are cleverer. South Korean companies are effectively targeting our market since they do not sell this product in their own home market or (in substantial volumes) to other nation. Over 98% of what is produced in South Korea is exported directly to the U.S.

Earlier this year, the Department of Commerce issued disappointing preliminary findings that failed to recognize and punish illegally dumped South Korean products. After decades of dumping practice, it appears that these companies have learned to circumvent our trade laws and illegally dump massive amounts of steel products in this market with ease and agility.

So it is not surprising that in advance of the impending final decision by the Department of Commerce, last month, the total OCTG imports hit a high of 431,866 net tons, a 77.4% percent change year/year. The South Koreans exported to the U.S. nearly 214,000 net tons of OCTG in May, an increase from the monthly average of 27,000 net tons in the prior 12 months. They are trying to dump as much product as they can before the final ruling.

The South Korean gamesmanship of our system of laws is disquieting. Their efforts are unchecked and repugantly effective. They have made repeated requests for deadline extensions

to supply information and documents that the Department of Commerce investigators need in order to provide a thorough review. As a result, the investigators are forced to review incomplete and inaccurate information in an untimely manner. This allows for little or no time to conduct proper assessments or for appropriate follow-up inquiries, thus making the adjudicators formulate their decisions based on inaccurate information.

When a respondent refuses to provide information that the Department of Commerce needs to calculate an accurate dumping or subsidy margin and fails to cooperate by not acting to the best of its ability to comply with the Department of Commerce's requests for information, the statute permits the agency to assign that company a dumping or subsidy rate based on adverse facts available ("AFA"). When Congress enacted these provisions, it explained that they are "an essential investigative tool," providing "the only incentive to foreign exporters and producers to respond to Commerce questionnaires."

In practice, it is a muddled mess.

In our view, U.S. law already provides ample authority to effectively deal with lack of cooperation by foreign producers, but this is an area where Congress may wish to clarify the statute and provide even more express guidance about the need for an effective response to obfuscation by foreign producers. There are a number of effective proposals that have already been made in this regard.

Equally troubling is the use of discretion without logic. Since South Korea has no market for OCTG, the Department of Commerce must "construct" values of production costs and profit margins. The trade laws allow for some discretion in these computations; however, that discretion must be exercised in a reasonable way.

In this case, foreign producers have advocated for the Department of Commerce to construct profit margins based on Korean non-OCTG products sold in their home market – in this case, using inferior construction-grade steel pipe. This is not even an apples and oranges comparison; this is akin to comparing a scooter to a sophisticated motorcycle. Just because they have wheels, their use is neither similar nor substitutable. Clearly, lower grade pipes sold in the South Korean market cannot be compared with – or substituted for – the high value, high safety and quality OCTG products produced by companies like United States Steel. Yet, that is exactly what the foreign producers have been advocating. Once again, we believe there is clear authority in the current statute to use reasonable measures to calculate a "constructed value" but this is another issue where Congress may wish to consider even more express guidance.

We are also concerned that the International Trade Commission (ITC) apply the standard of material injury that was clearly intended by Congress – and not require companies or workers to show severe harm before they can access the trade laws. For example, the mere fact that an industry's performance may have improved somewhat should not preclude an affirmative injury

finding – particularly when the industry’s performance is materially weaker than it otherwise would have been due to the effect of the dumped imports.

While the statute allows for the evaluation of relevant factors for the establishment of **material injury** – both actual and potential – at times U.S. decision makers have focused too heavily on whether there were declining trends over the investigatory period and on operating margins alone as a proxy for injury. There are clearly other indicia of actual and potential material injury: suppressive effects on cash flow, production, net income, employment and growth, among others. **All of these must be taken into account.**

Given the threat we face from unfair trade and the importance of these laws to all manufacturers and workers, we believe that application of the **correct injury standard is paramount** – and this is yet another area where Congress may wish to provide additional guidance.

Mr. Chairman, there are many other technical improvements proffered by the industry’s legal minds to address the widening gap between Congressional intent and application of the trade laws, all WTO-compliant.

We would welcome the opportunity to work with you and the Committee to make common sense, effective improvements to these vital laws.

We also support strong, full and transparent Congressional oversight of the decision-making and enforcement process.

In closing, we rely upon you to ensure our laws and the intent of this esteemed body are reflected in the deliberations and decision of those entrusted with this sacrosanct responsibility.

It is not enough to open new markets for American goods and services; I submit to you that the greater economic and national security and, indeed, moral imperative is to ensure that the rules governing trade in our own market are respected.

The livelihoods of thousands of Americans and future of a time honored American industry hang in the balance.

Thank you.

UNITED STATES SENATE COMMITTEE ON FINANCE HEARING

**“Trade Enforcement: Using Trade Rules to Level the Playing Field
for U.S. Companies and Workers”
June 25, 2014**

Questions for Mr. Mario Longhi

Question from Senator Hatch

Question 1

Mr. Longhi, we fully expect foreign nations to come into compliance with their international commitments when we prevail during dispute settlement proceedings.

Do you think it is important for the United States to lead by example and come into compliance with our international trade commitments in the rare instance where we are found to be out of compliance?

Response to Question 1

The United States promoted and has advanced the creation and expansion of a rules-based transparent system of international commerce and trade. United States Steel Corporation wholeheartedly endorses this multilateral system governing the conduct and practices of global trade and actors, as long as the rules are enforced without passion or prejudice in all markets including our own domestic market.

Questions from Senator Portman

Question 1

I visited your Lorain operations in 2012 and saw the new #6 Quench and Temper finishing line first hand. I was pleased to see how new opportunities to create energy here in the U.S. were creating jobs in Ohio and I know you have made other significant investments in advanced technology for other steel products. However, with these advancements, we need to ensure that workers in Lorain and other OCTG operations in Ohio are not facing illegally dumped and subsidized foreign products. I have been very involved with the ongoing OCTG case, along with your company, the USW, and other Ohio manufacturers. How are U.S. Steel's investments in Ohio impacted by the ongoing OCTG trade enforcement case?

Response to Question 1

When U. S. Steel makes an investment to upgrade its facilities or to expand capacity, we do so with the expectation that we will be able to obtain a market-based rate of return on our

investment. In recent years, there has been increased demand for high-end tubular products, and we saw an opportunity to grow our sales of those products. To that end, U. S. Steel has invested over \$200 million dollars at our Lorain Tubular Operations, creating new jobs: \$100 million has been invested in advanced technology to add strength and durability. An additional \$100 million is being invested to upgrade our seamless mill to expand the range of pipe we produce. Having made those investments we now need a chance to obtain a fair rate of return. Dumped and subsidized imports deny us that chance. We have been injured; plain and simple.

Question 2

Customs duty evasion is a particularly troubling way for some companies to avoid the rules of the road in international trade. When goods are illegally dumped in the United States, jobs in Ohio and around the country are put at risk. That is why American companies spend millions of dollars every year on anti-dumping and countervailing duty cases. How has customs evasion impacted workers at U.S. Steel along with smaller Ohio manufacturers?

Response to Question 2

Trade cases, like the one we filed on OCTG, require a lot of resources and the process takes a long time before a remedy is put into place to counter the injury to domestic manufacturers and their workers. This is made even more egregious when duties are ordered but countries use fraudulent schemes to evade those orders. This means that the remedy that is supposed to be in place for a company that has already shown, through the International Trade Commission process, that it has been injured by unfairly traded imports is completely negated. This prolongs the injury to the domestic manufacturer and in many cases triggers increased job losses. For some small businesses this continued injury after financing a costly trade case can literally cause them to go out of business. As such, it is absolutely critical that Customs and Border Protection (CBP) use its authority to collect the correct amount of AD/CVD duties imposed by law and due to the U.S. Treasury and for Congress to pass the ENFORCE Act which will provide a more formal and transparent process for companies to file allegations of AD/CVD fraud and evasion to CBP.

Statement for the Record by

**Bart Peterson, Senior Vice President, Corporate Affairs and Communications
Eli Lilly and Company**

**Before the
Senate Finance Hearing on
Using Trade Rules to Level the Playing Field for
U.S. Companies and Workers**

June 25, 2014 – 2 pm

Chairman Wyden, Ranking Member Hatch, Honorable Members of the Finance Committee, ladies and gentlemen. I greatly appreciate the opportunity to testify before you today on a matter of great importance to my company, Eli Lilly and Company, our industry, and all U.S. businesses involved either directly or indirectly in trade.

My name is Bart Peterson, and I am the Senior Vice President of Corporate Affairs at Lilly. Since our founding by Col. Eli Lilly in 1876, we have been committed to discovering solutions to the world's most pressing health challenges. More than a century later, we remain true to our founding family's vision and values – to create high-quality medicines that make life better for people here and around the world with integrity, excellence, and respect for people.

Trade is essential for our success. A fair and transparent set of trade rules across the globe is fundamental to our ability to bring medicines to people who need them. Those rules must be enforced, and the U.S. Government must have the tools and resources necessary to enforce them.

We rely on U.S. trade policy not only to open new markets, but also to enforce existing obligations with our trading partners – whether through bilateral or multilateral trade agreements. Where enforcement is weak, slow, or does not exist, we struggle to level the playing field against state-owned enterprises, unfair domestic competition, and outright theft of our intellectual property.

While Congress has granted U.S. trade agencies and the Administration a number of tools to help enforce trade agreements and protect the rights of U.S. companies abroad, we welcome the Committee's efforts to measure and modernize those tools. We are concerned that the market access provisions of Special 301 in particular are not given as much weight as the IP provisions. We feel strongly that a lack of market access diminishes our IP rights, and Special 301 should reflect that reality. We also hope that the Committee will continue to consider how to make the enforcement of Special 301 more robust. We have the utmost respect for the work of the staff of USTR, handling numerous complex and challenging issues with professionalism and considerable skill. Some of the concerns related to enforcement relate to limited resources at USTR and other agencies, but overall, in complicated sectors such as ours and other IP-intensive industries, we could use better tools to address the market access, counterfeiting, and IP challenges we face.

While enforcing compliance with the provisions of existing trade agreements is fundamental, it is equally important to have the highest standards enshrined in new agreements. We also encourage the Committee to work diligently to pass Trade Promotion Authority. We respect the Chairman's goal to build consensus around TPA language before it moves forward, but we hope that Congressional leaders will bear in mind that the world is watching. Not having TPA hurts the ability of our negotiators to get the best deal possible in TPP and TTIP. The bi-partisan TPA bill introduced earlier this year addressed a number of important issues for our sector, including new enforcement tools, strong language on IP, a commitment to ensuring fair processes regarding pricing and reimbursement of our medicines, and safeguards against forced localization and protectionist policies. We hope that any future versions of TPA legislation will be equally strong on these important provisions, and we look forward to working with the Committee and Senate leadership on getting TPA passed as soon as possible.

Intellectual property is the lifeblood of the pharmaceutical sector, and its protection is one of our most pressing trade issues. We welcome Chairman Hatch's proposal to create the position of Chief IP Negotiator at USTR. Nowhere is the need for strong language to protect IP more important than in the Trans-Pacific Partnership (TPP). To achieve the negotiating objective of having a high-standard, 21st-century agreement, it is critical that the final TPP has pharmaceutical IP provisions equal to KORUS and U.S. law, including 12 years of data exclusivity for biologics. We commend USTR for pressing for these standards, as well as Japan for its support for them. Whether or not China and India ever become TPP members, it is clear that the standards that are set in TPP will be the new global ceiling. With this in mind, it is critical that we work closely together on both sides of the Pacific to ensure that the final TPP has the highest pharmaceutical IP standards, including 12 years of data exclusivity for biologics. On TTIP, we strongly favor an ambitious, comprehensive, and high-standard trade and investment agreement. Lilly and the pharmaceutical industry believe that TTIP represents a unique opportunity to promote the highest standards of intellectual property protection, market access, and regulatory coherence. For the IP-driven sectors in which the EU and U.S. enjoy a global advantage, in particular, we believe the two governments should use TTIP to work together to maintain and strengthen that advantage.

We are not naïve to the politics and controversy regarding our industry and trade. I spend a lot of time in Geneva dealing with stakeholders, including many critics of our industry, and I am very familiar with their arguments in the area of intellectual property. As a company, we believe firmly that IP is not an impediment to access to medicines in emerging economies or the developing world. The good work of many global groups to provide access to medicines in LDCs, often with the support of companies like Lilly, must be accompanied by commitments by governments in these nations, civil society, and the private sector to address fundamental gaps in basic care, diagnosis, technology, trained medical staff, and healthcare infrastructure. We hope that negotiations on issues such as data exclusivity in TPP will be on their own merits and not confused with the very real issues at play in global health. We believe that innovation and new medicines are part of the solution to these problems and have demonstrated our willingness to be long-term partners around the world in this area.

From an international business perspective, I wanted to take the opportunity to briefly describe a diverse set of examples of why trade enforcement is so important to us. But I wanted to begin with describing what trade means to my company and my state. While we are a global company, our headquarters, and one might say our soul, is in Indiana. In that state alone, thousands of small- and medium-sized businesses depend on the financial health of Lilly. It is sometimes said, "When Lilly catches a cold, the State of Indiana gets ill."

While many of these businesses, from our lawn care providers, to our caterers, to our suppliers of sundry goods, as well as high-tech lab equipment, are not large enough on their own to trade with the world; make no mistake that the success of our global business helps support them. Every lost dollar of revenue due to unfair competition, questionable legal decisions, protectionism, or counterfeiting has an effect on the local economy. This is why trade enforcement and high-standard agreements are so fundamentally important.

Here are some prime examples of the need for strong enforcement with which many of the Committee members may be familiar. They run the gamut from developed to emerging economies, and they all massively impact our business:

CANADA:

Since 2005, Canadian courts have struck down 20 pharmaceutical patents, including three Lilly patents, for lack of "utility" or usefulness. This has resulted in more than one billion dollars in estimated lost revenue to our industry. Domestic generic companies in Canada have then been allowed to copy these clearly useful drugs.

Canada is the only country in the world using this heightened utility standard, which we believe is in violation of their trade obligations under both NAFTA and TRIPS. Enforcing Canada's international obligations in this area should be a priority.

INDIA:

As this Committee well knows, in recent years the innovative biopharmaceutical industry has faced significant challenges in India in protecting the intellectual property that supports our industry's innovations. Indian administrative and judicial decisions have undermined intellectual property in ways that are inconsistent with India's WTO commitments. Since 2012, at least 15 new medicines have had their patent rights violated. This includes the use of a compulsory license, patent denials under Section 3(d), unwarranted pre- and post-grant oppositions, revocations and infringements of patents, and lack of regulatory data protection. We greatly appreciate the efforts of the U.S. Congress and Administration to raise these issues at the highest levels, as well as constructive plans to continue doing so with the new Indian Government. Secure IP protections, consistently enforced, are aligned with Prime Minister Modi's goals of bringing growth to India through research, innovation, and manufacturing. There is a strong, positive, and well-recognized correlation between foreign direct investment inflows and reliable IP regimes. For these reasons, we are hopeful that the innovative industry and the U.S. Government will be able to engage in a renewed dialogue with the Indian Government on these issues and work productively toward solutions that will improve patient access to lifesaving medicines and healthcare overall without weakening the IP protections that incentivize their discovery. We urge the U.S. Government to encourage the new Indian Government to use this opportunity to demonstrate respect for, and fair enforcement of, global IP rules.

CHINA:

When China joined the WTO, it committed to provide six years of protection against “unfair commercial use” of data submitted to the regulatory agency in the approval of new chemical entities. However, China defines “new” as “new to the world.” This unique interpretation nullifies the data protection because it allows non-innovators to rely on an innovator’s approval outside of China in the approval of un-authorized copies in China. As a result, commercially significant products face unfair competition from un-authorized copies, sometimes even before the innovator is able to enter the Chinese market. To further undermine its commitment, China does not consider biologically synthesized drugs within the scope of new chemical entities. This is not only inconsistent with common international practices, but it also stands to undermine the protection of the next generation of important medicines.

KOREA:

In the Korea-US Free Trade Agreement (KORUS), Korea agreed to “recognize the value of patented pharmaceuticals.” However, certain Korean Government pricing practices fundamentally conflict with this commitment. Under Korea’s universal healthcare system, the government sets the prices for new, patented pharmaceuticals by referencing the prices of similar products on the market – including the prices of generics and off-patent originators. Referencing the prices of such old products fails to recognize the value of the significant investment it takes to develop and bring new patented medicines to market.

CHILE:

Chile has so far reneged on implementation of its pharmaceutical IP commitments as part of the US-Chile Free Trade Agreement. This lack of commitment to implementing agreed-upon policies is worrisome and should be of great concern to USTR and this Committee as it pertains to high standards in trade agreements.

This may seem like a laundry list, but because our sector often bridges the gap between the public and private portions of most healthcare systems, we are unusually susceptible to increases in protectionism, the power of state-owned enterprises, a lack of transparency in decision making, and “creative” interpretations of IP standards. For innovation to thrive and for the U.S. to maintain its competitive advantage in innovative sectors, we need robust enforcement of trade obligations, as well as new trade agreements to open markets and create a high standard for rules related to trade.

ANTI-COUNTERFEITING

Without a doubt, counterfeiting is the most serious form of trademark infringement impacting both consumers and private companies like Lilly. Moreover, counterfeiters steal jobs from legitimate workers and avoid paying needed revenue amounting to approximately \$30 billion annually. Most importantly, counterfeit medicines can be deadly. Counterfeit medicines have not been approved by the Food and Drug Administration for safety or efficacy and are a hazard to the health and safety of the nation. Unfortunately, the current laws have had limited effect in stopping this counterfeit trade, and Lilly supports stronger enforcement measures to better combat this problem. One positive example of international cooperation is Operation Pangea – a

collaboration between law enforcement, customs, and regulatory authorities from 111 countries to identify the makers and distributors of illegal drug products and medical devices. This collaboration has successfully targeted internet sales and worked to remove these dangerous products from the supply chain. More needs to be done because the problem is massive – there are approximately 35,000 rogue online pharmacies worldwide. Lilly supports U.S. Government efforts to expand international cooperation in this important area.

In closing, Mr. Chairman, I would like to compliment the work that your Committee and staff have done with the White House and USTR to continue to put advancing trade and enforcing the rights of U.S. companies front and center. Lilly looks forward to working with you on improvements to U.S. trade policy and enforcement to the benefit of our economy and our citizens.

Thank you.



**Statement by Richard Wilkins, Treasurer
American Soybean Association
before the
Committee on Finance
United States Senate**

June 25, 2014

Good afternoon, Mr. Chairman and Members of the Committee. I am Richard Wilkins, a soybean producer from Greenwood, Delaware, and Treasurer of the American Soybean Association (ASA). ASA is a national trade association with over 24,000 farmer members in 28 states and represents all U.S. soybean producers on national and international issues important to the soybean industry. ASA works closely with other producer groups, the grain trade, and technology providers on cross-cutting biotechnology issues. We appreciate the opportunity to present our views today on the role of enforcement in addressing challenges to exports of U.S. agricultural commodities and products derived from biotechnology. This issue is particularly important in the case of trading partners which do not follow or enforce their own rules, leading to serious trade disruptions which hurt not only exporters but also their own industries.

The Priority of Biotechnology Trade

Biotechnology is a key tool in our effort to satisfy the world's needs for food, feed, fiber and fuel, and to meet the challenge of a global population that is projected to reach 9.2 billion by the year 2050. Since the introduction of the first biotech soybean and corn traits in 1996, acreage planted to crops engineered via biotechnology to express agronomic and quality characteristics has expanded to encompass the majority of U.S. row crop production. In 2013, 93 percent of soybeans, 90 percent of corn, 90 percent of cotton, 93 percent of canola, and 98 percent of sugar beets grown in this country were genetically modified. As a result, timely approval of new biotech traits in importing countries directly impacts global market access for these crops.

Regulatory delays in importing countries have costly impacts on the entire U.S. value chain. For biotechnology companies, they can lead to delaying commercial launch of a new trait to avoid disrupting trade. Such delays erode patent terms, directly affecting investment in research and development of new traits. For growers, delays that impact commercial launches keep new seed technology out of U.S. farmers' hands and reduce U.S. farmer competitiveness. And for the grain trade, regulatory delays increase the cost, uncertainty and risk of trading grain and oilseeds globally and may cause trade to be disrupted.

The U.S. value chain has been a global leader for biotechnology advocacy for many years. ASA and 14 other major national trade associations have joined together as the U.S. Biotech Crops

Alliance (USBCA), which is working to find consensus on how to address asynchrony in international biotech regulatory approvals. Our members include farm organizations representing growers who depend on biotechnology-improved crops, companies whose advanced seed technologies we rely on to remain competitive, and companies which process and export our products to markets overseas.

In addition, opportunities are emerging with key countries such as Argentina, Brazil, Paraguay, and Canada which, combined with the U.S., produce and export an overwhelming majority of the world's crops derived from biotechnology. Both the soybean and corn industries have established international grower-based groups focusing on how our producers and countries can work together to expand trade and overcome trade barriers—the International Soy Growers Alliance (ISGA) and MAIZALL.

These multilateral partnerships are essential to efforts to achieve global food security. But they won't be enough. We are asking the Administration to make trade in biotech commodities and products a top trade policy priority, to engage other governments on biotech trade issues at the highest level, and to ensure that our trading partners honor their obligations under international trade rules. Only with high level, multi-ministry engagement will we be able to overcome current regulatory challenges, minimize the potential for trade disruptions, and strengthen competitive access for U.S. agriculture. Our objective is to facilitate market access for U.S. agricultural commodities produced through biotechnology through bilateral and multilateral trade negotiations, including negotiations underway in the TPP and TTIP. Enforcement tools through the World Trade Organization exist, but we strongly believe increased focus on working with important trading partners to remove barriers to trade through negotiation could help us resolve problems without resorting to litigation.

Regulatory Challenges to Biotech Exports

As a relatively new and groundbreaking means for increasing yields and enhancing quality of crops which provide food, feed and fiber, agricultural biotechnology faces challenges in the different ways in which importing as well as exporting countries have chosen to regulate it. In the U.S., the Coordinated Framework agreed to by USDA, EPA and FDA in 1986 established the principle that, once a commodity with a biotech trait is determined to be safe for food, feed, and the environment, it is deregulated. This determination is grounded in science-based decision making. In the years prior to and following the introduction of biotech crops, study after scientific study by credible academic, regulatory and scientific bodies in the United States and around the world have determined that crops produced through agricultural biotechnology are as safe as their conventional counterparts. Indeed, some biotech crops have improved nutritional profiles, while others reduce environmental impacts by facilitating conservation tillage and reducing herbicide or pesticide applications.

Other countries have adopted criteria for approving the production, import and use of biotech crops and products. However, these decisions are subject to regulatory systems which differ significantly, and which can result in lengthy delays between approval in the country which

produces the biotech crop and approval in countries which import the commodity. This is a key concern because, until an importing country approves a new biotech trait, the presence of even a trace amount of that trait in a cargo can result in its rejection, causing major losses to the shipper. This “zero tolerance” policy makes addressing asynchronous regulatory approvals a critical priority in maintaining and expanding trade in biotech commodities and products.

Depending on the country, delays in regulatory approvals can be substantial. China, by far the largest market for U.S. soybeans, does not initiate regulatory review of a new trait until it has been approved in the exporting country. This can delay commercialization of a new biotech crop in the United States by over two years. The regulatory process in the European Union has become so politicized that companies have been forced to postpone commercialization of new traits in the United States, sometimes for years.

The Need for a Global Low Level Presence Policy

A system for harmonizing international biotech approvals is urgently needed. The optimal approach would be for countries to agree to synchronize their approval timelines, or to mutually recognize each other’s approval decisions. However, given the disparate national regulatory approaches currently in place, these solutions may be many years in the future.

In fact, harmonization should not be so elusive. All major U.S. export markets are WTO Members, and WTO requirements are quite specific. Under WTO rules:

- Regulatory decisions must be based on sound science and a risk assessment;
- Risk assessments must be performed according to standards established by international organizations such as Codex Alimentarius and the International Plant Protection Convention;
- Applications must be processed without undue delay;
- Approval procedures must be transparent and regulators must be responsive to requests for information from the applicant;
- Procedures must exist for reviewing complaints from applicants regarding the approval process and for taking corrective action;
- Data requirements must be limited to what is necessary for the assessment of risks;
- Conditions of approval must be no more trade-restrictive than necessary to meet level of protection.

If our trading partners respected these obligations, the trade barriers we are facing would disappear.

A shorter-term answer would be for the U.S. and other governments to establish a global Low Level Presence (LLP) policy. An effective LLP approach would allow a commercially feasible amount of a biotech trait which has been determined to be safe and approved in an exporting

country but not yet approved in an importing country, to be present in a shipment without resulting in its rejection.

Unfortunately, the global discussion on LLP has not advanced, and we believe U.S. leadership on this issue is critical to bringing other countries to the table. We respectfully urge the Committee to work with the Office of the U.S. Trade Representative, USDA, EPA, and FDA to establish a LLP policy that can serve as an example, and then to work with other major exporting and importing nations to establish workable Low Level Presence policies globally.

Biotechnology Approvals in China

I would like to return to my earlier comment on the importance of China as a market for U.S. biotech commodities and products. China is by far the largest buyer of U.S. soybeans, importing over one-fourth of our annual production. The Department of Agriculture forecasts that China will also become the world's largest corn importer by 2020. U.S. agriculture is a long-term committed partner in working with China to meet its food security needs.

In the past, Chinese officials routinely announced regulatory decisions on new biotech traits three times per year, and their system processed new applications in a 24-30 month timeframe according to China's biotechnology regulations. However, since 2011, Chinese regulatory decisions on new traits have been issued only once a year, and it has been a full year since the last announcement on "new" corn or soybean traits. Delays are increased by requirements that unnecessarily lengthen the approval process. As indicated above, China refuses to accept an application for regulatory review before the product in question has been approved in the exporting country. Moreover, China requires in-country field tests even for products that will be imported only for food, feed or processing rather than cultivation. These requirements cannot be justified scientifically and are therefore clearly WTO-inconsistent.

It is critically important for the Administration to engage the Government of China at the highest level to reach a mutually beneficial understanding on trade in biotech commodities. This engagement should include the Joint Commission on Commerce and Trade (JCCT) and the Strategic and Economic Dialogue (S&ED). China's future food security depends, in large measure, on our ability to commercialize new biotech traits in a timely and predictable manner. We ask for the Committee's support in achieving this understanding between our two countries.

EU Biotech Policies

The U.S. also has serious and longstanding problems with the biotech regulatory approval system in the European Union. While the EU initially approved the first biotech crops in 1996, it has since taken steps to limit their use and to slow approvals of new traits. In 1999 and again in 2004, it adopted laws and rules which require that biotech commodities be able to be traced to their country of origin and that products containing more than 0.9 percent of a biotech ingredient be labeled. Faced with the likelihood of negative reactions by consumers to

pejorative labels, food companies reformulated their products, effectively eliminating biotech-derived foods in EU supermarkets and restaurants.

According to the EU, the purpose of the labeling requirement is to provide information to EU consumers who wish to purchase non-biotech products. The EU could have accomplished the same objective without distorting trade by establishing voluntary labeling standards for non-biotech foods. A WTO Member is obliged to choose a less trade-restrictive measure if one that accomplishes its objective is reasonably available.

The EU also has allowed its process for approving the importation of new traits for food and feed processing to become politicized. A number of Member States routinely vote against import authorizations and thus seriously delay and block approvals, despite positive safety reviews and recommendations of these new traits by the European Food Safety Agency. It then falls on the European Commission to decide whether or not to issue authorizations for the import of commodities and foods containing new biotech traits. However, even Commission decisions have been delayed for months or years due to political considerations. The end result is that the EU routinely fails to meet the approval timeframes established in its own regulations, often by many months or even years. And the situation is getting worse, not better.

The EU's College of Commissioners is expected to decide by next month whether to approve eight new biotech events that have gone through the tortuously-slow EU review and approval system, received positive EFSA determinations, but failed to receive approval by Member State representatives at the Standing and Appeals Committee levels. We hope the Commission issues final authorizations for these eight events without further delay.

The EU approval process has already been the subject of WTO litigation. In 2003 a WTO panel ruled that the EU was guilty of undue delay in the processing of applications. In the wake of the ruling, the U.S. government pushed hard for changes in EU practices, and, for a time, the situation improved marginally, as the moratorium on processing applications was removed and the Commission restarted the approval process. However, delays persist, and significant political interference in the risk management process continues. This issue should be among the highest priorities for the Administration within the TTIP, and the agreement should ensure the EU fully complies with its WTO obligations.

The result of the EU's unscientific biotech labeling requirements and politicized import approval process has been a sharp drop in sales of U.S. soybeans and soybean products as well as of other commodities to EU markets. U.S. soy sales fell by more than half, from 9.2 million metric tons in 1995 to 4.5 million tons in 2013. U.S. corn exports remain at near zero as new traits have been commercialized which have been hung-up in the EU approval system.

Compounding the situation, either by accident or by design, the EU has imposed its approach to biotechnology on other countries which export agricultural commodities and foods to EU markets. Many of these are developing countries with longstanding trade ties to EU Member States. Rather than forego exports, they have rejected adoption of biotech crops which would

benefit both their farmers and their consumers. For the same reason, some of these countries prohibit imports of biotech commodities from the U.S. and other exporters.

TTIP Negotiations

An approach currently available for addressing biotech barriers in the EU is through the TTIP negotiations. ASA sent letters and testified on several occasions prior to the launch of TTIP on the need for the negotiations to address the EU's labeling regulations and the fact that it is not meeting its own timelines for making decision on biotech trait applications. However, we have seen statements by EU negotiators that the EU will not consider changing any of its biotech laws or regulations as a result of a TTIP agreement.

This is not an acceptable position. The very nature of trade agreements necessitates the changing of laws and regulations by all parties to implement their provisions. We urge the Administration and Congress to ensure that key EU biotech policies that discriminate against U.S. exports are addressed within TTIP. Specifically, we believe the following changes must be achieved, either within or in advance of a TTIP agreement:

1. The EU must take the steps necessary to comply with its own regulations and timeframes for making science-based decisions on biotech products for import. This should include improved timeliness of EFSA reviews and Member State or Commission decisions on biotech crops intended for import and food and feed processing.
2. Commercially meaningful tolerances must be established for the low-level presence of biotechnology-derived commodities which have been approved by U.S. regulatory authorities but for which reviews have not yet been completed by EU regulatory bodies.
3. Poland's discriminatory and unjustified law which would ban the use of biotech ingredients in animal feed must be removed. Although implementation of the law has been delayed until 2017, it has no basis in science, is trade restricting, and contravenes the EU's WTO commitments.
4. The EU's trade-restricting, mandatory traceability and labeling requirements must be modified or replaced with non-discriminatory rules that allow food manufacturers to market – and consumers to choose – GMO-free products. Such policies have worked well, in both the EU and the United States, to allow food manufacturers to market, and consumers to choose, organic products without stigmatizing all other food products that contain ingredients produced via non-organic, modern or traditional agricultural practices.

Beyond biotechnology, ASA has other objectives that we believe must be achieved within or leading up to a TTIP agreement. These include:

1. Addressing the EU's Renewable Energy Directive, which imposes discriminatory greenhouse gas emissions reduction requirements on U.S. soy-based biodiesel and sustainable production documentation and practices on U.S. soybean farmers;
2. Ensuring that thresholds for important crop protection products used on U.S. crops are not eliminated for non-science based reasons;
3. Ensuring that a new protein-crop subsidy scheme in the latest version of CAP reform does not undermine EU commitments under the WTO; and,
4. Removing non-science based barriers to U.S. livestock products.

We have provided the Administration with information on these issues and would be happy to share this information with the Committee as well.

Conclusion

In conclusion, the U.S. must insist that biotechnology be a top priority in TTIP, TPP, and future trade agreements, including any resumption of the Doha Round. These negotiations should directly address the very real problems we are experiencing in biotech trade, in particular the failure of trading partners to follow their own legally mandated timelines and procedures for biotech authorizations. Only when there are real "teeth" in trade agreements will the U.S. be able to use enforcement tools to protect our interests. If the Administration and Congress do not press our trading partners to address biotechnology in trade negotiations, it will make the task of improving conditions for biotech exports that much harder.

We greatly appreciate the Committee's support in encouraging the Administration to address policies that are inhibiting the growth of agricultural biotechnology exports as well as other trade-restrictive practices.

Thank you again, Mr. Chairman. I will be happy to respond to any questions.

UNITED STATES SENATE COMMITTEE ON FINANCE HEARING**“Trade Enforcement: Using Trade Rules to Level the Playing Field
for U.S. Companies and Workers”
June 25, 2014****Questions for Mr. Richard Wilkins****Question from Senator Hatch****Question**

Mr. Wilkins, 27 countries around the world—including most of the world’s largest agricultural producers—plant biotechnology crops. Yet, you still struggle to get approval for your products in the markets of some of our largest trading partners. Your experience shows that, as you put it in your testimony, only when our trade agreements have “teeth” can enforcement be an effective tool.

The TPA bill I introduced in January calls for the Administration to obtain enforceable rules on sanitary and phytosanitary measures that go beyond those in the WTO Agreement.

Within that objective, what is the number one thing we can do in a trade agreement to help your industry gain a foothold in markets that have been improperly closed to biotech products?

Answer

Thank you, Ranking Member Hatch. The American Soybean Association supports the Trade Promotion Authority Legislation that you introduced in January, and we thank you for your efforts to strengthen the rules for agriculture, seeking robust and enforceable rules on sanitary and phytosanitary measures. In order for the soybean industry to maintain and to expand the global market access that we so heavily rely on, a system needs to be in place for harmonizing international approvals on biotechnology. Ideally, in a trade negotiation, countries would agree to synchronize their approval timelines, or to recognize the approval decisions of the partnering countries.

In the near future, an acceptable solution would be for the U.S. and partnering countries to establish a global Low-Level Presence (LLP) policy. An LLP approach would allow for a commercially feasible amount of biotech trait that has been determined to be safe, though has not yet been approved by an importing country, to be present in a shipment without causing a rejection, or disruption in trade. Establishing an LLP policy as part of ongoing trade agreement negotiations would be a step in the right direction to help us gain access to markets that have been closed due to biotech policies.

Question from Senator Brown**Question**

Mr. Wilkins, do you believe that delay of approval of American biotechnology products in the Chinese market an attempt to slow walk access to this market by American producers while Chinese companies develop crops with similar attributes?

Last year we saw Shuanghui International Holdings successfully complete a multi-billion purchase of Smithfield Foods—one of our nation’s largest pork producers. Many have suggested that while there is a clear demand for pork in China, that the real focus of this purchase was access to Smithfield’s breeding and hog management technology. Should we be concerned that other Chinese companies will be focused on acquiring American seed companies, not so much for existing product, but for the technology? Are you concerned that this might have a negative effect on American farmers?

Answer

Thank you, Senator Brown. It is difficult for us to understand fully China’s motivation regarding U.S. biotechnology event approvals. But, the American Soybean Association can say for certain that unpredictability in the Chinese system, just like unpredictability in the U.S. system, has a direct impact on American soybean growers’ planting decisions. Well over 90 percent of U.S. soybean production is biotech. In 2013, 28 percent of total U.S. soybean production was exported to China accounting for \$13.4 billion. Considering China is such a large and important market for U.S. soybean producers, commercial launch of new biotechnology products may be delayed in the United States until the Chinese approval is complete. This means, U.S. soybean farmers may not have access to needed biotechnology events that are crucial to weed resistance management or value-added quality traits, such as heart healthier soybean oils. Therefore, the Chinese approval process can have a direct impact on our farmer’s ability to leverage new technology innovations that improve yield, enhance U.S. competitiveness, and help meet China’s long-term food security needs.

Question from Senator Portman**Question**

With 26,000 soybean farmers in Ohio, Ohio is ranked sixth in soybean production across the United States. Additionally, over half of Ohio's soybean crop is exported to foreign markets. How can Congress and the U.S. government utilize export agreements and trade enforcement tools to improve regulatory predictability for ag-biotechnology?

Answer

Thank you, Senator Portman. Congress and the U.S. government must insist that biotechnology be a top priority in ongoing trade agreements, as well as in the enforcement of current WTO requirements.

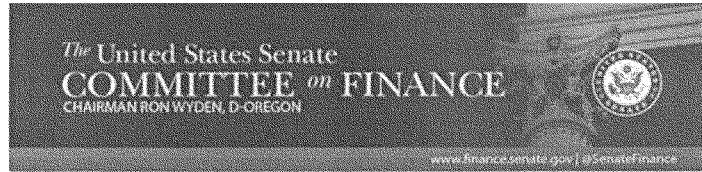
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Finally, if our trading partners simply respected and were compliant with current WTO obligations, the trade barriers we face would disappear. Under WTO rules:

- Regulatory decisions must be based on sound science and a risk assessment;
- Risk assessments must be performed according to standards established by international organizations such as Codex Alimentarius and the International Plant Protection Convention;
- Applications must be processed without undue delay;
- Approval procedures must be transparent and regulators must be responsive to requests for information from the applicant;
- Procedures must exist for reviewing complaints from applicants regarding the approval process and for taking corrective action;
- Data requirements must be limited to what is necessary for the assessment of risks; and
- Conditions of approval must be no more trade-restrictive than necessary to meet level of protection.

Thank you for your support in our efforts to raise this as an important trade issue with the Administration, and for helping to ensure our abilities to continue to protect and grow Ohio's soybean industry.



Wyden Statement on the Need for Strong Trade Enforcement
As Prepared for Delivery

Much of the recent debate in Congress over international trade has focused on agreements currently in the works, including the Trans Pacific Partnership and the Transatlantic Trade and Investment Partnership. Not enough time is spent on the trade agreements already in place - have they created American jobs, have they boosted our economy, are they being effectively enforced?

While I intend for the Finance Committee to examine all aspects of U.S. trade policy, today it will focus on enforcement. Without strong enforcement, no trade deal – old or new – is able to live up to its potential for jobs and economic growth. And it becomes extraordinarily difficult to build support for new agreements. Foreign nations will continue locking American goods and services out of their markets.

And foreign companies that get unfair backing from their own governments will continue undercutting our manufacturers, farmers and ranchers, driving hard-working Americans out of businesses and out of their jobs. The latest tactics used by foreign nations and companies to skirt our trade rules seem like they're ripped from the pages of crime and spy novels. They hide paper trails to make it harder to build cases in trade courts.

They intimidate witnesses, forcing American businesses to relocate factories or surrender intellectual property and threatening retaliation if they speak out against unlawful behavior. They even spy on our trade enforcers and companies to undermine efforts at holding them to the rules. And after they've been caught breaking the rules, they engage in outright fraud to avoid punishment. They play cat and mouse with customs authorities, using shell companies and fraudulent records to exploit weaknesses in our system.

The global economy is more interconnected than ever, which means there's more at stake for American workers and businesses. China, India, Brazil – the list of critical markets with serious enforcement challenges has grown. As that process has played out, for example, currency manipulation has hit American workers and businesses harder than it did in previous decades – particularly when it comes to China. Currency manipulation makes any product manufactured in the U.S. – any product – artificially expensive. In effect, it's a way for China to keep a finger planted on the scale, costing the U.S. jobs and making it harder to recover further from the Great Recession.

When I joined the Senate, the U.S. had only three free trade agreement partners. Today it has FTAs with 20 countries. China joined the World Trade Organization in 2000, bringing with it a host of enforcement challenges. With so many new agreements and issues to confront, the enforcement job has gotten bigger. Our enforcement policies have to account for new rules in trade. Guatemala, for one, is now a

U.S. free trade partner. When Guatemala repeatedly fails to enforce its own labor laws, the U.S. must take a stand and uphold the rules. All trade commitments in all agreements have to be enforced with the same vigor.

The challenges of the modern, global economy simply do not always fit neatly within our aging enforcement system. American trade enforcement needs to be brought into the 21st century. For example, when the Chinese government gives its domestic solar companies massive subsidies, the U.S. needs to respond quickly and with all available resources. In practice, the response took years, and was too little and too late to protect thousands of American jobs and home-grown technologies. The Chinese solar companies had already crippled their American competitors.

That's why a more effective enforcement authority is needed. Better enforcement tools would identify and stop a problem more quickly before it costs American jobs.

The same goes for enforcement at our borders. When fake tennis shoes or counterfeit computer chips arrive in the U.S., Customs often appears too focused on security rather than its trade mission. This is especially damaging since foreign companies and governments are finding new ways to mask where products come from before they show up at our doorstep. For example, Chinese companies avoid anti-dumping duties by routing merchandise through a place like Singapore before it heads to the U.S. The schemes are becoming even more complex, sometimes involving shell companies that appear one day and disappear the next without leaving any paper trail.

The ENFORCE Act, bipartisan legislation I first introduced 2011, would mount a stronger defense against those practices. It would set up a standardized process to move investigations forward, and it would establish better lines of communication between agencies to get information in the right hands. It would also refocus Customs so that its trade mission doesn't get short shrift.

Proper trade enforcement is an increasingly difficult job. It takes time, and the fact is that it's impossible to stand up a trade case in a single day. But it's essential for enforcement agencies to have the resources needed to do their jobs effectively. Too often, when these cases lag, American workers are losing their jobs and businesses are closing their doors. Succeeding in the global economy is already challenging enough; the U.S. cannot add to the difficulty by underfunding its enforcement efforts.

That's especially true at a time when the U.S. is negotiating more trade deals. There are lots of American businesses and workers who look at NAFTA and the WTO and wonder whether more trade agreements are really a pathway to growth. I hear that in Oregon from folks in town halls all the time.

The same goes in trade. If enforcement falls short for the agreements already in place, it will call into question America's ability to enforce future agreements, too. And our international competitors will see an opening to break the rules at the expense of American jobs and exports.

So the challenge today is to build a strong enforcement system that befits the modern, global economy – one that ensures trade agreements respond to today's challenges to deliver jobs and economic growth to more Americans.

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COMMUNICATIONS

WRITTEN STATEMENT OF THE
AMERICAN WIRE PRODUCERS ASSOCIATION (AWPA)

SENATE COMMITTEE ON FINANCE
HEARING on the "Trade Facilitation and Trade Enforcement Reauthorization Act
of 2013" (S. 662)

May 22, 2013

American Wire Producers Association
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INTRODUCTION

The American Wire Producers Association (AWPA) appreciates the opportunity to submit this written statement in connection with the Committee's hearing on the "Trade Facilitation and Trade Enforcement Reauthorization Act of 2013" bill (S. 662). Specifically, our members support the inclusion of the "Enforcing Orders and Reducing Customs Evasion Act of 2012" (ENFORCE, as approved by the Finance Committee in July 2012) in this bill. We remain firm in our view that the U.S. Government needs to be more proactive in ensuring that foreign producers and exporters cease the illegal evasion of antidumping and countervailing duties by transshipping goods through third countries and illegally declaring the goods as a product of that third country; falsifying documents to misrepresent country of origin or misclassify the goods; and other "creative" means of evading the duties imposed on the goods by the U.S. Government.

American wire and wire products manufacturers have been seriously and adversely impacted by these trade-distorting policies, making it almost impossible for our industry to compete with unfairly-traded imports. The ENFORCE Act's provisions included in S. 662 will increase the transparency, responsiveness and effectiveness of Customs and Border Protection's (CBP) enforcement activities and thus, greatly improve the effectiveness of our trade laws and the relief that they are intended to provide to U.S. industries and American workers injured by unfairly-traded imports.

BACKGROUND

The AWPA is a trade association which represents companies that collectively produce more than 80% of all carbon, alloy and stainless steel wire and wire products in the United States. The 82 member companies employ more than 20,000 workers in over 215 plants and facilities located in 35 states and 139 Congressional Districts.

American wire and wire products manufacturers are entrepreneurial and work hard to maintain their competitive market position despite heavy import pressure on their products. They pride themselves on their high productivity and constant reinvestment in the latest technology and equipment, keeping the American wire industry one of the most globally competitive segments of the steel industry.

CIRCUMVENTION AND EVASION OF DUTIES

Domestic producers and industries may petition the U.S. Commerce Department and the U.S. International Trade Commission (ITC) to investigate imports that are believed to be sold at less than fair value or "dumped" in antidumping duty (AD) investigations or which benefit from improper government subsidies in countervailing duty (CVD) investigations. AD/CVD investigations and orders are the primary means by which U.S. industries combat unfairly-traded imports. However, these remedies are only effective to the extent the orders are enforced and attempts to illegally evade the orders are stopped.

The Situation Today:

Foreign exporters and U.S. importers are increasingly using various schemes to evade payment of AD/CVD duties when goods are imported into the U.S. Evasion often involves transshipping products through a third country, sometimes by repacking or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports, claiming that they are a different product or that they are excluded from the scope of the

case. Other common tactics to avoid AD/CVD duties include subjecting the products to minor alterations or sending parts to a third country where insignificant completion or assembly operations are performed. Such products are then improperly identified as a product of the third country in blatant circumvention of the order.

These actions not only violate U.S. law and deprive American companies of the relief which the AD/CVD laws are intended to provide, **they also result in hundreds of millions of dollars that are lost annually to the U.S. Treasury in the form of uncollected duties from wire and wire products alone.** In addition, there are a host of other industries being impacted, including glycine, honey, diamond saw blades and tissue paper products. In these lean economic times, failure to collect these duties is unconscionable and unacceptable.

AWPA Position:

A number of AWPA member companies have successfully obtained multiple AD and CVD orders against imported wire products that were found to be sold at dumped prices or unfairly subsidized by foreign governments. These companies have experienced firsthand the effects of the illegal evasion schemes used by foreign producers and U.S. importers to evade the payment of lawfully-owed duties. These illegal schemes have caused further injury to these companies and caused the loss of more American jobs.

We fully support the inclusion of the ENFORCE Act in the Customs Reauthorization bill. This legislation establishes a process for CBP to investigate claims that AD/CVD orders are being evaded:

- Domestic producers can formally petition CBP to investigate possible evasion.
- Once an investigation is initiated, CBP must make both a preliminary and a final determination as to whether an importer is engaged in evasion.

To make a determination of evasion, CBP is directed to focus on whether the correct amount of duty is being collected on the merchandise, rather than on an importer's intent to engage in evasion.

CBP is authorized, however, to use its full authority and enforcement tools, including collaboration with Immigration and Customs Enforcement (ICE) to pursue additional criminal charges when an importer's intent is involved.

- CBP is required to act and publicly report on its findings within set timeframes.
- The bill prescribes enforcement and remedial measures for each determination, and specifically instructs CBP to use all its existing tools to enforce the U.S. customs and trade remedy laws.

The legislation does NOT give CBP the authority to expand the existing scope of covered merchandise or expand CBP's existing authority to investigate goods subject to AD/CVD orders.

One Requested Revision:

AWPA would support a slight change to the language as written. In Section 302, the amendment of Sec. 517 (b)(2)(A), we believe that all domestic interested parties should be allowed to file allegations of evasion, including manufacturers, producers, wholesalers, certified or recognized unions or group of workers, trade or business associations, and/or U.S. importers. Providing all domestic interested parties the ability to file allegations of duty evasion would allow all affected parties to offer their own perspectives and knowledge of the markets and industries in which they operate. We believe this change would improve the overall bill and make it more effective.

We look forward to working with the Members and staff of the Finance Committee to move this critical bill forward with the inclusion of the ENFORCE Act language. In these challenging economic times, we are not asking for special treatment, just the opportunity to compete fairly with our international trading partners.

Sincerely,



John Martin
President
American Wire Producers Association (AWPA)



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CHRISTOPHER B. DOUVILLE
PRESIDENT

July 8, 2014

Senate Committee on Finance
Attn: Editorial and Document Section
Rm. SD-219
Dirksen Senate Office Bldg
Washington, DC 20510-6200

Title and Date of Hearing: Trade Enforcement: Using Trade Rules to Level the Playing Field for U.S. Companies and Workers, June 25, 2014

Dear Chairman Wyden and Ranking Member Hatch:

This letter is submitted in connection with the Committee's June 25, 2014 hearing on trade enforcement.

ANSAC, headquartered in Westport, Connecticut, is the international marketing arm for three U.S. soda ash manufacturers: FMC Corporation (Philadelphia, Pennsylvania), OCI Chemical Corporation (Atlanta, Georgia), and Tata Chemicals North America (Rockaway, New Jersey). ANSAC was formed to be an integrated organization dedicated exclusively to U.S. soda ash exports. Its full-time staff handles all aspects of U.S. export sales from plant to customer. Since ANSAC's inception in 1983, logistics costs have been dramatically reduced, reliability of supply has been significantly enhanced, and U.S. soda ash exports have more than tripled, reaching \$1.2 billion in 2013.

The U.S. soda ash industry is truly an export success story for the United States. Soda ash is a chemical raw material required to manufacture commodities such as glass and detergents. U.S. soda ash is the most competitive and environmentally-friendly in the world due to a unique natural deposit of the soda ash raw material trona located in Green River, Wyoming, from which the U.S. could supply world demand for 400 years. The U.S. industry produces roughly 20 percent of total global output, and, due to flat demand for soda ash in the United States, export markets are critical to maintain industry growth. Soda ash is the largest U.S. inorganic chemical export and the second largest export out of the Port of Portland, behind wheat, and the industry directly and indirectly accounts for tens of thousands of jobs in the United States.

This success can be attributed in part to the supportive trade policy of the U.S. Government, including trade enforcement actions. As the U.S. is a net exporter of soda ash, imports from abroad are not of concern to the industry. It is trade barriers in foreign markets and export incentives for foreign suppliers that are most worrisome, as they threaten to curtail growth in U.S. soda ash exports. We wish to highlight a few of the soda ash industry's market access concerns as important for the continued attention of U.S. trade enforcement.

China VAT Rebate

China's 2009 reinstatement of a 9% rebate of its 17% VAT for soda ash exports is an example of China's longstanding efforts to manipulate commercial outcomes through government industrial policy. The introduction of the

VAT rebate resulted in an increase in China's soda ash exports and a fall in U.S. exports. China's producers pay little attention to market conditions and instead are being driven by artificial incentives, including the VAT rebate. China's continued capacity expansion and promotion of soda ash exports are not sound from a commercial, energy-saving or environmental perspective. China's industrial policies, including the VAT rebate on exports, make it more difficult for U.S. soda ash to compete in third-country markets.

ANSAC was pleased that one of the results from the 23rd U.S.-China Joint Commission on Commerce and Trade was an agreement relevant to the VAT. Namely, China confirmed that a Ministry of Finance-led delegation would hold discussions with the United States, beginning in the first half of 2013, in order to work toward a mutual understanding of China's VAT system and the concepts on which a trade-neutral VAT system is based.

Unfortunately, as noted in the [2013 USTR Report to Congress on China's WTO Compliance](#), "further discussions have not yet produced any commitment from China to change its VAT system." The United States should continue to emphasize that industrial policies such as VAT rebate manipulation do not contribute to the rebalancing of the world economy, which China has committed to at the G-20 and elsewhere.

Vietnam Tariff

In January 2014, Vietnam raised its tariff on soda ash from 0% to 2%, creating an additional obstacle for U.S. exports as they compete against those from China, which enter duty-free under the ASEAN-China Free Trade Agreement. This further harms U.S. exports which were already at a disadvantage compared to China's, as they incur additional bagging costs at destination and higher handling costs in distribution than those facing Chinese suppliers.

Although the 2% tariff increase does not violate Vietnam's trade agreement obligations, it is nonetheless disturbing that an important participant in the Trans-Pacific Partnership (TPP) negotiations would be increasing tariffs on products of importance to the U.S. at the tail end of the FTA negotiations. This issue should be addressed with the Government of Vietnam outside of the context of the TPP, emphasizing the benefits for Vietnam's industry and domestic manufacturing should the tariff on U.S. exports return to 0%. The imposition of this new tariff will harm U.S. competitiveness and threatens the loss of market share that ANSAC has taken more than 15 years to build to what it is today.

Thank you for your consideration of these issues.

Sincerely,



Christopher B. Douville



Leading Innovation. Creating Opportunity. Pursuing Progress.

Statement for the Record

National Association of Manufacturers

733 10th Street, NW, Suite 700

Washington, DC 20001

Senate Committee on Finance

on "Trade Enforcement: Using Trade Rules to Level the Playing
Field for U.S. Companies and Workers"

June 25, 2014



Statement for the Record**Senate Committee on Finance
“Trade Enforcement: Using Trade Rules
To Level the Playing Field for U.S. Companies and Workers”****June 25, 2014**

The National Association of Manufacturers (NAM) is pleased to provide the following statement for record for the Senate Finance Committee's hearing on trade enforcement.

The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributing more than \$2.08 trillion to the U.S. economy in 2013 alone.

The NAM has long championed a robust trade policy to grow manufacturing in the United States. At its core, a robust and pro-manufacturing U.S. trade policy should seek to open markets and level the playing field overseas, improve the competitiveness of manufacturers in the United States and ensure the strong enforcement of the rules of the trading system at home and by our trading partners.

Manufacturers in the United States are most successful when our trading partners play by the same basic trade rules, including treating our products on an equal basis in their markets and not providing their own industries with special advantages that tilt the playing field. Trade agreements set the rules of the global economy, without which there would be no rules to enforce globally. Many of the concerns expressed about unfairness in the global marketplace can, in fact, best be addressed by negotiating new agreements with stronger rules. As well, U.S. domestic trade rules provide vital and internationally approved mechanisms to ensure a more level playing field in the U.S. domestic market and should be fully administered and enforced. In short, both trade agreements and domestic trade rules are critical to manufacturers' success in the global economy.

Consider that more than 97 percent of U.S. companies that export are small and medium-sized businesses with less than 500 employees.¹ U.S. employment in trade-related jobs grew six and a half times faster than total employment between 2004 and 2011.² Jobs linked to exports pay, on average,

¹ U.S. Department of Commerce, **U.S. Exporters in 2011: A Statistical Overview**, accessed at http://www.trade.gov/mas/ian/smeoutlook/tq_ian_001925.asp.

² Baughman and Francois, **Trade and American Jobs, The Impact of Trade on U.S. and State Level Employment: An Update** (2010), accessed at http://businessroundtable.org/uploads/studies-reports/downloads/Trade_and_American_Jobs.pdf; Business Roundtable, **How the U.S. Economy Benefits from International Trade and Investment**, accessed at

18 percent more than other jobs.³ According to the Peterson Institute for International Economics, American real incomes are nine percent higher than they would otherwise have been due to more open trade and immigration policies adopted since World War II.⁴

The basic rules of trade⁵ are found in three main sources:

1. Agreements covering market access, trade barriers, intellectual property and other issues to which 159 countries have agreed as part of the World Trade Organization (WTO).⁶
2. Stronger and more detailed trade and investment agreement provisions that open markets and level the playing field for America's manufacturers are found in our bilateral and plurilateral free trade agreements⁷ and bilateral investment treaties.⁸
3. U.S. laws and regulations that can be used to address unfair actions overseas, including trade remedy rules,⁹ safeguard rules, and intellectual property rules.¹⁰

The Negotiation of New Trade and Investment Agreements Establishes New and Stronger Rules to Open Markets and Level the Playing Field

Trade and investment agreements play an outsized role in providing businesses of all sizes across all 50 states better access to an \$11 trillion global market for manufactured goods and to the 95 percent of the world's consumers who live outside our border. By setting the rules of the global trading system,

http://businessroundtable.org/sites/default/files/legacy/uploads/general/BRT_State_Studies_US_Total.pdf.

³ Riker, **Do Jobs in Exports Still Pay More? And Why?**, U.S. Department of Commerce Manufacturing and Services Brief (July 2010), accessed at http://trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003208.pdf; see also

⁴ Cline, **Trade and Income Distribution: the Debate and New Evidence**, Peterson Institute for International Economics, access at <http://www.iie.com/publications/pb/pb.cfm?ResearchID=94>.

⁵ NAM, **Trade Helps Level the Playing Field and Make Sure Countries Play by the Rules** (August 2013), accessed at <http://www.nam.org/~media/693F214D8FF54C7EA5F5B0C3F51E769C.ashx>.

⁶ WTO, **WTO Legal Texts**, accessed at http://www.wto.org/english/docs_e/legal_e/legal_e.htm.

⁷ USTR, **Free Trade Agreements**, accessed at <http://www.ustr.gov/trade-agreements/free-trade-agreements>.

⁸ USTR, **Bilateral Investment Treaties**, accessed at <http://www.ustr.gov/trade-agreements/bilateral-investment-treaties>.

⁹ **Title 19: Customs Duties: AD/CVD**, accessed at http://www.usitc.gov/trade_remedy/USC-Title_19_1671-1677.htm

¹⁰ **Section 1337. Unfair Practices in Import Trade**, accessed at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title19/html/USCODE-2010-title19-chap4-subtitleI-partII-sec1337.htm>.

multilateral, plurilateral and bilateral agreements are a prerequisite to a strong enforcement agenda.

Most of the world's countries have agreed to a basic set of trade rules as part of several agreements under the auspices of the World Trade Organization. The WTO agreements incorporate many important obligations, including commitments by countries:

- Not to discriminate against foreign goods;
- Not to provide unfair subsidies and advantages to their local producers;
- To respect and enforce basic intellectual property rights;
- To limit import tariffs to negotiated levels; and,
- To pay penalties if they refuse to keep their promises.

Efforts to strengthen and expand these rules for all WTO members and eliminate tariffs and other barriers in the "Doha" negotiations have unfortunately stalled.

In addition to the WTO, the United States has negotiated free trade agreements on a bilateral or plurilateral basis. These agreements – referred to as either free trade agreements (FTAs) or trade promotion agreements – eliminate barriers more comprehensively than the WTO agreements and set in place stronger rules to improve the competitiveness of manufacturers in the United States, including rules on the protection of intellectual property and investment and ensuring greater transparency and fair competition. The United States' experience under our FTAs demonstrates that where manufacturers from the United States can compete on a level playing field abroad, they can boost sales and grow their share of foreign markets. America's 20 existing free trade agreement partners account for less than 10 percent of the global economy but purchase nearly half of all U.S. manufactured goods exports.¹¹ For many states, including Ohio and Texas, that figure is closer to 60 percent.¹² The United States enjoys a nearly \$60 billion manufacturing trade surplus with its trade agreement partners, compared with a \$508 billion deficit with other countries.

To negotiate the type of comprehensive, high-standard and market-opening trade agreements that have driven export growth and jobs across the country, trade promotion authority (TPA) is absolutely vital.¹³ TPA legislation has been in place and was utilized during the negotiation and implementation of the

¹¹ U.S. Department of Commerce, International Trade Administration, **TradeStats Express**, accessed at <http://tse.export.gov/TSE/TSEhome.aspx>.

¹² NAM, **U.S. Manufacturing Statistics – Manufacturing and Trade Data by State**, accessed at <http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx>.

¹³ It is sometimes argued that hundreds of trade agreements have been negotiated without TPA. Those agreements are not the type of agreement that opens markets overseas or includes binding and state-of-the art dispute settlement. For example, Trade and Investment Framework Agreements provide a useful opportunity for the United States to engage in economic discussions with foreign governments, but do not obligate either country to open its market or address barriers.

Uruguay Round Agreements creating the WTO and for 13 FTAs negotiated since 1974.¹⁴ Since TPA was put in place most recently in 2002, U.S. manufactured goods exports more than doubled from \$623 billion to \$1.38 trillion.¹⁵ Those exports support millions of American jobs, including, for example, 212,000 in Michigan, 189,000 in Pennsylvania, 185,000 in New York and 107,000 in New Jersey.¹⁶ In Oregon, Delaware and Maryland, manufacturing accounts for more than 80 percent of all state exports. Full state fact sheets are available at the NAM's website.¹⁷

Manufacturers welcomed the Bipartisan Congressional Trade Priorities Act of 2014 introduced at the beginning of this year.¹⁸ This legislation sets forth the much-needed Executive-Congressional framework to ensure that both branches of government work to achieve the strongest possible outcomes in our trade agreements. This legislation also provided important updates to the traditional TPA framework, including with respect to priority negotiating issues. From the NAM's perspective, this legislation provides the type of framework needed to secure new, market-opening trade agreements. Action on TPA is vital to ensure that U.S. negotiators can bring home the strongest possible outcomes in the ongoing Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (T-TIP) talks that will set in place new and stronger rules to level the global playing field. The NAM urges this Committee to move TPA to the floor as quickly as possible.

In addition to WTO agreements and FTAs, the United States also negotiates bilateral investment treaties (BITs) that open foreign markets to U.S. investment and ensure that U.S. investments overseas are accorded the same basic rule of law protections already available to all investors, foreign and domestic, in the United States. Those market-opening and core rules are also subject to strong and binding dispute settlement, including the investor-state dispute settlement (ISDS) mechanism that is critical to enforce these agreements. While some may question the value of foreign investment into the United States, the facts are clear. The U.S. Bureau of Economic Analysis' own data show that year-after-year U.S. investment overseas helps drive U.S. exports, research and development (R&D) and capital investment in the United States, producing higher wages for employees of companies that invest

¹⁴Of all U.S. market-opening FTAs, only the U.S.-Jordan FTA was implemented without TPA. Notably, the Jordan FTA is much less comprehensive or developed than our other FTAs, and most prominently lacks a state-of-the-art time-limited dispute settlement provisions that are found in the North American Free Trade Agreement and all subsequent FTAs.

¹⁵ U.S. Department of Commerce, International Trade Administration, **TradeStats Express**, accessed at <http://tse.export.gov/TSE/TSEhome.aspx>.

¹⁶ NAM, **U.S. Manufacturing Statistics – Manufacturing and Trade Data by State**, accessed at <http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx>.

¹⁷ *Id.*

¹⁸ NAM, **Statement for the Record for Senate Finance Committee Hearing on “Advancing Congress’ Trade Agenda, the Role of Trade Negotiating Authority.”** (Jan. 16, 2014, accessed at <http://www.nam.org/~media/CD7BF524D1244FCD82CDB106EEFDE6E4.ashx>).

overseas.¹⁹ In the most recent 2010 data, U.S. companies with foreign investments generated about 48 percent of total U.S. goods exports, while accounting for less than a quarter of U.S. private sector output. These companies are also involved in approximately three-quarters of all R&D in the United States. And contrary to claims outsourcing, most goods sold by the foreign subsidiaries of U.S. companies – nearly 90 percent – stay overseas.²⁰ In short, U.S. investment overseas brings strong benefits back to the U.S. industries, workers and the U.S. economy and our trade and investment agreements should recognize that value by opening up foreign markets and protecting U.S. investment overseas, subject to strong enforcement mechanisms.

Enforcement of Existing Trade and Investment Agreements Is Essential

For our trade and investment agreements to be successful, it is also vital to ensure effective enforcement of the commitments contained in those agreements by our trading partners and the United States.

Enforcing Trade Agreements with our Trading Partners

On the international side, the United States has worked vigorously through successive administrations to address market access barriers and other unfair treatment of U.S. exports. Before agreements first enter into force, the Office of the United States Trade Representative (USTR) works vigorously to ensure the full implementation of commitments. And in most cases, commitments are implemented fully. In cases where they are not, USTR works through the consultation and ultimately the dispute settlement provisions provided in trade agreements to ensure full implementation. Indeed, since the WTO was established nearly two decades ago in 1995, the United States has brought and successfully resolved 70 of the 74 cases that have been concluded.²¹ Notably, the United States has brought over 20 percent of the 481 requests for consultation made overall in the WTO.²² These cases have an important impact on growing manufacturing in the United States. For example, in the past few months, the United States won a very important WTO case that addresses manufacturers' concerns over China's export restrictions on rare earths that

¹⁹ Barefoot, **U.S. Multinational Companies: Operations of U.S. Parents and their Foreign Affiliates in 2010** (Nov. 2012), accessed at <http://www.bea.gov/scb/pdf/2012/11%20November/1112MNCs.pdf>.

²⁰ See, e.g., Slaughter, **How U.S. Multinational Companies Strengthen the U.S. Economy (2010) (Revised Update)**, Published by Business Roundtable and United States Council Foundation. Mataloni, Jr., **Multinational Companies: Operations in 2006**, Published by the Bureau of Economic Analysis (Nov. 2008).

²¹ Office of the United States Trade Representative, **Snapshot of WTO Cases Involving the United States** (May 22, 2014), accessed at <http://www.ustr.gov/sites/default/files/Snapshot%20May.pdf>.

²² Id.; World Trade Organization, **Chronological List of Dispute Cases**, accessed at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm As USTR's snapshot explains, the United States has filed 103 requests for consultation.

impeded access to such inputs.²³ With the underlying agreements, such strong dispute settlement outcomes that open markets and ensure fair treatment would not be possible.

Sustained attention is needed to address other governments' failure to implement their trade and investment commitments fully, including where appropriate through the use of WTO and FTA dispute settlement mechanisms. Most recently, the NAM has been hearing significant concerns about the implementation of the Korea-U.S. (KORUS) FTA from our members. Since this agreement came into force over two years ago, many tariffs and barriers have been successfully eliminated, helping to spur new commercial opportunities and growth in U.S. exports and sales to Korea. Those benefits are largely the result of the KORUS FTA. Unfortunately, we have also heard from a wide range of U.S. manufacturing industries that have continued facing serious challenges in South Korea and have indicated that South Korea has failed to implement fully the letter and spirit of the FTA. Among the issues over which the NAM is concerned are new and pending barriers to and penalties on automotive imports that have created a high level of uncertainty and are undermining the ability to execute a coherent business plan; excessive and unnecessary origin verification requirements; the failure to implement fully *de minimis* rules on an MFN basis and without exception (e.g., for e-commerce); lack of full transparency and due process provisions for pharmaceutical and other regulated products; and incomplete implementation of government procurement commitments. More recently, we are seeing an increased misuse of antitrust policies to foster industrial policy, setting a dangerous precedent for the region and in complete disregard of the FTA competition obligations.

The Administration, including most actively USTR, has been working diligently with the government of South Korea to resolve these issues and ensure that Korea's government fully lives up to its KORUS commitments. While a number of serious problems have been resolved as a result of these processes, others have not and in some cases appear to be getting worse. The NAM believes and has communicated to USTR that full consideration of the use of the formal dispute settlement provisions included in the KORUS FTA must now be considered. The non-politicized dispute settlement processes contained in the WTO and in our FTAs are exactly the type of enforcement tool that has prompted strong support from a wide variety of U.S. industries and Congress. The inclusion of these processes in each of the major FTAs that the United States has concluded helps ensure that the commitments made are more than words on paper and that market access and other problems are successfully resolved. It is critical for the United States to continue to demonstrate its commitment to full enforcement of FTA obligations with Korea, as well as to our other trading

²³ USTR, **USTR Helps Win Case Against China, Helps Manufacturers Compete** (March 2014), accessed at <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-wins-victory-in-rare-earths-dispute-with-China>.

partners with which the United States has concluded FTAs or other binding and enforceable agreements.

Upholding the United States' International Obligations at Home

Similarly, the United States should uphold its obligations under international agreements and honor remedies imposed when U.S. actions are found to be out of compliance with those obligations. Just as we expect our trading partners to meet the letter of their international obligations, so should the United States.

Currently, the WTO is reviewing modifications to the U.S. Country-of-Origin Labeling (COOL) regulations for meat products, which the WTO had previously found discriminatory and therefore out of compliance with the United States' WTO obligations. If the WTO determines the modified COOL regulations continue to violate our trade obligations pertaining to our two largest export markets (Canada and Mexico), the WTO could authorize those countries to subject an array of U.S. exports to retaliatory tariffs, which would cause serious economic harm to many manufacturers in the United States. To prevent such negative impacts on America's manufacturers, the NAM is calling upon Congress to ensure that the Administration has the authority to act quickly to suspend indefinitely the COOL regulations in regard to meat products if the WTO rules against those regulations.

Enforcement through Investor-State Dispute Settlement (ISDS)

With regard to the enforcement of trade and investment agreements, the NAM also strongly supports the continued inclusion and use as appropriate of ISDS contained in U.S. FTAs and BITs. ISDS is a vital enforcement tool that allows individual investors (whether business or non-profit) to seek enforcement of basic principles – such as non-discrimination, compensation for expropriatory action (*i.e.*, takings) and fair treatment – before a neutral arbitration panel. ISDS is in essence an enforcement mechanism and those seeking a more level playing field for manufacturers in the global economy should support the inclusion of this mechanism in existing and future agreements, including the TPP and T-TIP agreements. Such provisions should be broadly available both for the core investment rules of the underlying agreements, but also with respect to contracts and other investment agreements signed by investors with the foreign government. Proposals to eliminate or modify these core enforcement rules should be rejected as such outcomes undermine rather than strengthen a strong enforcement agenda.

Full and Timely Enforcement of Domestic Trade Rules Is Essential

Domestically, the NAM continues to be a strong supporter of the full and fair enforcement of our trade remedy laws that help manufacturers address

government-subsidized and other unfair competition. These rules too are an essential part of a robust pro-growth and pro-manufacturing trade policy. U.S. trade remedy laws have long been part of the U.S. legal system and are internationally respected mechanisms, authorized by the WTO.

It is vital that both the Department of Commerce and U.S. International Trade Commission exercise their authority to counteract unfair practices overseas. Full, effective, timely and consistent enforcement by the U.S. government of these globally recognized rules is essential to ensure manufacturers get a fair shake in the global economy.

Enforcement of U.S. trade rules must occur during the investigatory and review stages, but these trade rules must also be enforced fully at our border. Too often, we hear stories of manufacturers that have spent significant time and money to utilize the trade remedy rules, only to find importers that are evading these orders. When manufacturers request that Customs and Border Protection (CBP) investigate these cases of evasion, years often pass with no resolution. The Senate Trade Facilitation and Trade Enforcement Act of 2013 (S. 662) includes an important fix to this problem and manufacturers continue to urge this Committee and Congress to move this legislation forward. In particular, the provisions in Title III of S. 662 would help strengthen CBP's authority to enforce antidumping and countervailing duty orders and to investigate effectively alleged evasion of those orders in a time-limited manner. We urge the Committee to expedite action on this important legislation.

Conclusion

In manufacturing communities across America, the gains from trade can and should be increased. The United States achieved a record level of \$1.38 trillion in manufactured exports last year, but we can and should do better so that America can expand manufacturing and jobs here at home. To improve the global competitiveness of manufacturers in the United States and grow our manufacturing economy, the NAM urges (i) prompt action on TPA and on new trade and investment agreements to level the playing field globally; and (ii) the full enforcement of those agreements and existing domestic trade rules.

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